United States Court of Appeals for the Second Circuit



APPENDIX

76-1299

ORIGINAL

To be argued by
Angelo T. Cometa

Pog S

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

against

SIDNEY STEIN,

Defendant-Appellant.

On Appeal from an Order of the United States District Court for the Southern District of New York

APPELLANT'S APPENDIX

PHILLIPS, NIZER, BENJAMIN,

KRIM & BALLON

Attorneys for Defendant-Appellant
40 West 57th Street

New York, New York 10019

(212) 977-9700

PAGINATION AS IN ORIGINAL COPY

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The following documents were forwarded to the Court of Appeals under seal and could not be reprinted in this appendix:

- (1) Government's Sentence Memorandum
- (2) Minutes taken In Chambers Prior to Sentencing March 28, 1975

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Picas;	JUDGE MOTLEY	PAROSE AAT
C. Perm No. 100	JODGE MOTEET	74UBL 579 M
MINAL DOCKET		
UNITED STATES	OP AMERICA	ATTO INEYS
UNITED STATES	or America,	For U. S.:
	-	Frank H. Wbh1, AUSA. 264-6292
/ NORMAN RUBINSO	N ₅ all cts.	204-0292
ALBERT PETFFER	1-18	
WILLIAM CHESTE	ER, -all cts.	
5 EDGAR RETHOLDS	3,-1,14-18.	E - Defendant
JEROME HASKELL	IE,-1-13.	For Defendant:
WALTER WAX, -1-	-13	
PHILIP KAYÉ, S	ER,-1-13, 19&20.	REST CODY AVAILABLE
	Defendants.	BEST COPY AVAILABLE
	Der Gimanos.	
ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED
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writies fraud. (Cts.2-18	1'//	(a) 3 ⁻
e fraud. (Cts.19 & 20)	13/20/2	Acces
Tyenty Counts)	4/.71/22/.20	16.00 - 1 - 1 - 11.00 -
DATE	PREZEEDING	or (From Acct)
74 743 - 1 1 - 11		(Paid to Fult)
-74 Filed indictment.		110-11
17-74 Deft Rubinson on	mears (no Atty) Com	t directs a plea of N/G he enter
		t at \$20,000 Pursonal kacognizan
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	efore leaving U.S. Kn	
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		Bond. Deft, to be Photographed
		nd to Continental U.S. and Cane la
		ing the country, Knapp. I.
		pleads N/C. Bail fixed by court
	Over	

	PROCEEDINGS	CLERK'S PEE		3.1
DATE	PROCEEDINGS	PLAINTIPF	DEFEN	DAN
	\$20,000 Personal Recognizance Bond, Deft, to be Photo-			-
	graphed and Fingerprinted, Deft, to surrender passport.		1	-
	Bail limits extend to Continental U.S. Knapp,J.			-
	N/G we entered Bill fixed by court at \$20,000 Personal	of	<u> </u>	
	Recognizance Bond. Deft. to be Photoghraphed and Finger			L
	printed. Deft. to surrender passport. Bail limits extended to Continental U.S. Knapp.		<u> </u>	
	Deft. Levine, Wax, Haskell & Kaye appear (Atty. Present Deft's. plead N/G. Bail fixed by court at \$20,000 Per-			-
	sonal Recognizance Bond for each Deft. Each Deft. to be Photographed and Fingerprinted Bail limits to extend to			-
	the Continental U.S. for each Deft. Knapp, J.		. 6.	
	Deft. Gardner present (Atiy. Present. Deft. pleads N/G.			
	Bail fixed by court at \$20,000 Personal Recognizance			
	Bond. Deft. to be Photographed & Fingerprinted. Deft. t	ю		
	surrender his passport. Bail limits to extend Continent	1 1	4	
	U.S. and Canada. Must notify U.S. Atty. 48 hours before	1 1		
	leaving. the U.S. Knapp,J.			1
	Case assigned to Judge Motley for all purposes.		-	+
-17-74	N. RUBINSON - Filed unsecured bond in amt. of \$20,000.			1
-17-74	A.M. FEIFFER - Filed unsecured bond in amt. of \$20,000.		23	4
	W. CHESTER - Filed unsecured bond in amt. of \$20,000.			I
	E.M.REYNOLDS - Filed unsecured bond in amt. of \$20,000.			L
	J.HASKELL - Filed unsecured bond in amt. of \$20,000.			1.
-17-74	L.LEVINE - Filed unsecured bond in aut. of \$20,000.			1
	W.WAX - Filed unsecured bond in amt.of \$20,000.			L
-17-74	P.KAYE - Filed unsecured bond in amt. of \$20,000.			1
-17-74	M,GARDNER - Filed unsecured bond in amt. of \$20,000.			1.
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	(See page 2a for Atty's)	1 1	1	1

NO FURTHER ENTRIES

C 100 Criminal Continuation Sheet

Motley, J.

****	· · · · · · · · · · · · · · · · · · ·
DATE	Processional
5-24-74	S.STEIN - Deft present (No atty.) Court directs a plea of Not Guilty be entered. 10 days for motions. Deft to F/P & R.O.R. Bail limits to extend the continental U.SNotify U.S.Atty. 5 days in advance if he as leaving the U.SKnapp, J.
6-26-74	W.K. CHESTER - Filed notice of motion to dismiss the indictment.
7-2-74	ALUERT FEIFFER*- Filed Consent Order extending bail limits to Dominican Republic up to 7-7-74. Motley, J.
7-3-74	EDUAR REYNOLDS- Filed defter Financial Affidavit.
8-12-74	WALTER WAX - Filed consent to change of atty's LAWRENCE LEVINE
8-26-74	J.J. HASKELL - Filed supplemental motion, for dismissal of the indictment.
8-28-74	ALBERT FEIFFER - Filed affdyt & ender-to-show a notice of motion to dismiss the indictmentPet. 9 3-74
8-30-7h 8-30-7h	MICHAEL GARDNER - Filed memorandum in support of bill of particulars
8-30-7h 8-30-7h	Michael GARDNER - Filed motion to strike surplusage MICHAEL GARDNER - Filed momorandum in support of motion to strike.
9-3-74 9-3-74	W.K. CHESTER - Filed motion to dismiss indictment for pre-indictment delay W.K. CHESTER - Filed motion to dismiss because prosecutor misled grand jury
9-3-74	W.K. CHESTER - Filed motion for appointment of an atty. W.K. CHESTER - Filed motion for discovery and inspection W.K. CHESTER - Filed motion for production of documents HERMINIANH Filed motion for change of venue HERMINIANH Filed motion to strike HERMINIANH Filed motion for bill of particulars HERMINIANH Filed motion to dismiss pursuant to rule 12
10-11-74	Filed transcript of record of proceedings, dated 6-27 74
10-17-74	Filed Affidavit "Notice of Motion by defts. W. Wax and . Levine, for an order requiring the government to serve and file a Bill off articulars etc, as indicated, rtble before Motley, J. on date and place fixed by the Court. Filed memorandum in support of the pre-trial motions of defts. Wax and "evine."
11-1-74	N.RUBINSON - Filed affdvt.of service by mail.
11-11-74	W.K. CHESTER - Filed motion to adopt other defts pretrial motions etc.
11-15-74	W.K.CHESTER - Filed memo endorsed on motion filed 11-11-74SO ordredMotley,J.
11-27-74	NORMAN RUBENSON ET.AL Filed Govt's notice of readiness for trial

DATE	PROCEEDING8
11227-74	Filed stip. and order enlarging bail limits for JEROME J.HASKELL.
	Filed affdyt, of Frank H.Wohl, AUSA in opposition to motion to dismiss.
and the second	
	Filed memorandum of the U.S. in opposition to defts pre-trial motions
12-2-74	Filed affdvt.of Frank H.Wohl.AUSA in opposition to motion for dismissal due to pre- indictment delay
12-18-7	N. RUBINSON, ET.AL 'led bill of particulars.
12-17-7-	Filed transcript of record of proceedings, dated 6-17-79
12-20-7),	N. RUBINSON - Hearing on representation of counsel begun & concluded. Deft to tern over passport to the U.S.AttyMotley, J.
72-23-74	Filed transcript of record of prospedings, dated Dec 5, 6, 1974
12-27-71	MICHAFI GARDNER - Filed affdvt. & notice of motion for an order dismissing the indiction and order for immediate trialRet.1-3-75
12-30-74	VILLIAM K. CHESTER - Filed motion to dismis on grounds of illegality of the extension of the Grand Jury
1-7-75	MICHAEL GARDNER - Filed motion to dismiss pursuant to rule 12
1-7-75	MICHAEL GARDNER - Filed memorandum of law in support of above motion to dismiss.
1-7-75	JEROME HACKELL - Filed notice of motion to dismiss on ground of alleged grand jury extension.
1-7-75	Filed supplemental bill of particulars
1-7-75	JEROFE HASKELL: Filed memorandum in support of his motion to dismiss the indictment.
1-7-75	SIDNEY STEIN - Deft & Atty-present. Withdraws plea of not guiltyPLEADS GUILTY to 1.7 & 14. Pre-sentence investigation ordered. Sentence adj'd to 3-18-75 11 a.m. Deft cont'd, on present bail (R.O.R.) Bail limits extended to the continental U.SMotley, J.
1-10-75	
	S.STEIN - Filed petition to enter plea of GUILTY So ordered Motley,J.
1-14-75	PHILIP KAYE, Charles Stillman of counsel, Deft withdraws plea of not guilty, PLEADS of GUILTY to count loop. S.I. ordered. Sentence adjd to March 18,1975Deft.R.O.R.
1-17-75	Filed memorandum opinion #11752 Re Grand JuryOn Jan.10-75 the court denied all deft's motions to dismiss the indictment on the theory that the grand jury returned indictment during a period it had been unlawfully extended***Accordingly defts motions based on multiple special grand jueiwa and impermissible extensions were
	also deniedMotley,JMailed notice

DATE	PROCEEDINGS
1-29-75	Filed true copy of U.S.C.A.order that petition for writ of mandamus and prohibition be and it hereby is denied.
1-22-75	N.RUBINSON - Jury trial begun before Motley, J.
	A.FEIFFER .
-	W.CHESTER
	E.REYNOLDS
	J. HASKELL
	L.LEVINE
	W.WAX
	M. GARDNER
1-23-75	Trial Cont d.
1-24-75	Trial cont d.
1-27-75	Trial cont d.
1-30-75	Trial cont d.
1-31-75	Trial cont d.
2-3-75	Trial cont d.
2-4-75	Trial cont d.
2-5-75	Trial cont d.
2-6-75	Trial cont d.
2-7-75	Trial cont d.
2-10-75	Trial cont d.
2-14-75	EDGAR REYNOLDS - Filed order to Marshal to serve subpoenss under criminal justice act Motley, Jcopies given to Marshal
	Trial cont'd.
2-11-75	Trial cont'd.
2-13-75	Trial cont'd.
	Trial cont'd.
2-18-75	Trial cont'd
2-19-75	IFIAI COUL U
	Trial cont'd. AND 2-21-75 Trial cont'd.
2-20-75	IIIai concessione
2-24-75	Trial cont'd.
2-25-75	Trial cont'd.
2-26-75	Trial cont'd.
3-3- 75	N. RUBINSON: FILED ONE (1) Manila Envelope Sealed and Impounded and placed in wealth in Pm 602. By rier of Motley, J.
-	Wed beautiful of manufacture 3 and TAN 0 1975
3-5-75	Filed transcript of record of proceedings doted JAN 8, 1975 Filed transcript of record of proceedings doted JAN 8, 9, 10, 1975
5-75	Filed transcript of record of proceedings, dated SAN. 8, 9, 10, 1975 Filed transcript of record of proceedings, dated SAN. 10, 1975
5-75 C. 100 C	Iminal Continuation Sheet
The same of the sa	

DATE	PROCEEDINGS					
3-6-75	Filed order that pursuant to 18 U.S.C.6002 and 6003 that Yahuda Weiss is ordered and compelled to give testimony etcMotley, J					
2-28-75	Trial Cont'd.					
3-3-75_	Trial Cont'd.					
3-4-75	Trial Cont'd.					
3-5-75	Trial Cont'd. Trial Cont'd.					
3-6-75	Filed ones envelope ordered sealed & impounded and placed in vault Room 602. Motley, J.					
3-10-75	MICHAEL CARDNER - Filed memorandum of law.					
3/10/75	Filed transcript of record of proceedings, dated /- 27-75					
3/10/75	Filed transcript of record of proceedings, dated 2-14-75					
3/10/75	Filed transcript of record of proceedings, dated 1-9-75					
3/10/75	filed transcript of rocure of proceedings, dated 1-14-75					
	Filed transcript of the land transcript of the land					
3-7-75	Trial cont'd.					
3-10-75	Trial cont'd.					
3-11-75	Trial cont'd.					
3-12-75	Trial cont'd.					
3-13-75	Trial cont'd.					
3-14-75	Trial cont'd.					
3-17-75	Trial cont'd.					
3-18-75	Trial cont'dGovt's motion to Dismiss Counts 20 as to RUBINSON & CHESTER Granted					
3-20-75	W.WAX - Filed memorandum in opposition to introduction of evidence of a prior					
3-19-75	Trial cont'd.					
3-20-75	Trial cont'd.					
3-21-75	Trial cont'd. Jury deliberations begun at 8:30 P.M.					
3-22-75	Trial cont'd. deliberations cont'd.					
3-23-75	Trial cont'd. deliberations cont'd. Jury returns a verdictDefts. JEROME HAS ALL,					
į.	NORMAN RUBINSON Guilty on Cts. 1 & 14 ALBERT FEIFFER Guilty on 1.3 & 14					
	REYNOLDS Guilty on ct.14P.S.I. ordered as to all deft's found guilty					
-	PURTNERN B-11 14 620 000 P. P. C. 5 5 15 75 11 Pall 14mlts sytemated to					
	7 11, Fla. & N.Y. only. FEIFFER-Bail cont'd \$20,000 P.R.B. Sent. 5-16-75 11 a.m.					
	R.B. Sent.5-15-75 11 a.m. Limits extended Nevada & N.Y. only					
	(Cont'd. on Page 7)					

.6.

AA8

DATE	PROCEEDING: AA8
3-23-75 (0	Cont'd.from page 6WILLIAM CHESTER Bail cont'd. \$20,000 P.R.B. Sent.adj'd to 5-15-75 ll a.m. bail limits extended to Miami, Fla. & N.Y. only
•	EDGAR REYNOLDSBail cont'd at \$20,000 P.R.B. Sent. adj'd to 5-15-75 11 a.m.
	bail limits extended to Miami, Fla. & N.Y. only. Jury discharged Court adid
	to 4 P.M. trial concludedMOTLEY, J
3-25-75	Filed requested additional instructionsdtd.3-22-75 6 P.M.
3-31-75	P.KAYE - Filed one manila envelope ordered sealed impounded and placed in vault
	1
-31-75	S.STEIN - Filed one manila envelope ordered sealed impounded and placed in vault Room 602
3-28-75	SIDNEY STEIN - Filed Judgment (# 75, 272)Atty.Leonard Glass, present The deft.is committed for imprisonment for a period of FIVE YEARS on count 1 and FINED \$10,000 TWO YEARS on count 7 and FINED \$10,000 Prison sentence on cts.
-	1 and 7 to run concurrently with each otherFIVE YEARS on count 14 and
i .	FINED \$5,000Prison sentence on Ct. 14 to run CONSECUTIVELY with sentence
	imposed on count 1 TOTAL lines of \$25,000 to be paid or deft is to stand
	committed until the fines are paid or he s otherwise discharged according
	to lawCts.2,3,4,5,6,8,9,10,11,12,13,15,16,17 and 18 are dismissed on
····	motion of deft's counsel with the consent of the GovtMOTLEY, J
3-28-75	PHILIP KAYE - Filed Judgment (Atty.Charles Stillman.present) the deft is committed for imprisonment for a period of ONE YEAR and ONE DAYCts.2.3.4.5.6.7.8.9.
	10,11,12 and 13 are dismissed on motion of defts counsel with the consent of the GovtMotley, JEnt.3-31-75
4-1-75	N.RUBINSON, ET.ALFiled Govt's proposed examination of prospective jurors
xkxxxxxxx	
4-1-75	Filed memorandum of law in support of defts Wax and Levine's motion to dismiss
4-1-75	Filed transcript dtd. 6-27-74.
4-1-75	E.REYNOLDS - Filed motion for discovery and inspection and bill of particulars.
4-1-75	W.WAX
1	L.LEVINE - Filed proposed examination on the voir dire
4-1-75	M.GARDNER - Filed memorandum in support of objection to certain evidence
4-1-75	E.REYNOLDS - Filed notice of motion to dismiss the indictment.
4-1-75	E REYNOLDS - Filed notice of motion to dismiss for prosecutorial misconduct etc.
4-1-75	E.REYNOLDS - Filed memorandum of law.
4-2-75	
4-24-2	Flied transcript of record of proceedings, dated 12-20-74
5-1-75	WILLIAM CHESTER - Filed post motion to strike jury verdict
5-1-75	WILLIAM CHESTER - Filed defts request for court assignent of appeal atty.
1 1	
	minal Continuation Sheet

PROCEEDINGS
NORMAN RUBINSON - Filed notice of motion for an order pursuant to Rule 29(c) setting aside the jury verdictOr for a new trial etc. Ret.5-15-75 at 11A.M.
AWRENCE LEVINE - Filed notice of motion for an order setting aside the jury verdice or for a new trialRet.5-15-75
Mod transcript of resonatings date 54N- 22, 23, 24, 30, 31, 1775
Filed transcript of recording the proceedings data? Fee 3, 4, 5, 6, 1275
Man transmitted of record of proceedings, dated Feb 13, 18, 19, 20, 1975
Miled transcript of record of proceedings, dated Fet 7, 10, 11, 12, 1775
Miled transcript of record of proceedings, dated Fet, 21, 24, 25, 26, 1975
Filed transcript of record of Occasions, dated Feb 27, 28, MAR. 3, 4, 1975
Med transcript of record of proceedings, dated MAR 5, 6, 7, 10, 1975
Med transcript of record at proceedings, date: MAR. 11, 12, 13, 14, 1975
Med transcript of record of percentings, date. MAR 17, 18, 17, 20, 1975
Med transcript of 10:000 of proceedings, day of MAR. 21, 22, 23, 1975
NORMAN RUBINSON: Filed notice of appeal to USCA from judgment of May 15, 1975. Nailed copies to Norman Rubinson at 22N. Hibiscus Drive Miami Beach, Fla. & U.S. Atty.
NORMAN RUBINSON - Filed Judgment (Atty. Thomas A. Andrews, present) The deft. is committed for imprisonment for a period of THREE YEARS on each of counts 1 and 14 to run concurrently with each other. Bail pending appeal fixed at \$30,000, cash or surety. The court recommends commitment at Eglin, A.F.B. in Florida Motley, J. Ent. 5-20-75
ALBERT FEIFFER - Filed Judgment (Atty. Morton Robson, present) The deft is sentenced to TWO YEARS on each of Cts.1,3 and 14 to run concurrently with each other, EXECUTION OF SENTENCE SUSPENDED, deft placed on probation for THREE YEARS subject to the standing probation order of this court, probation to commence upon expiration of period deft is now serving in indictment (73 Cr.421) imposed on June 21, 1973
Special conditions of probation., Deft not to engage in any type stock transaction during probationary period, MOTLEY, J Ent. 5-20-75
WILLIAM CHESTER - Filed Judgment(Without counsel) the court advised deft of right to counsel, and deft waived assistance of counsel. The deft is sencenced to THREE YEARS. EXECUTION OF SENTENCE SUSPENDED. Deft placed on probation for THREE YEARS.
subject to the standing probation order of this Court Special conditions of probation deft not to engage in any type of atock transactions during probationary period MOTLEY, E Ent. 5-20-75
-Cont'd.on page 9-
-Cont'd.on page 9-

BEST COPY AVAILABLE

	74Cr.5/3 .10. Hottey, J.
DATE	PROCEEDINGS # 75, 486
5-29-75	LAWRENCE LEVINE - Filed Judgment (Atty. Thomas Andrews, present) The deft is sentenced to EIGHTEEN MONTHS Imprisonment. Execution of sentence is suspended. Deft. is placed on Probation for a period of TWO YEARS, subject to the standing probation order of this Court, and deft is fined \$10,000.00 to be a paid within THIRTY DAYS of
	this JudgmentDeft. is to stand committed until the fine is paid or deft. is otherwise discharged according to lawMotley, JEnt.5-29-75
6-5-75	LAWRENCE LEVINE - Filed notice of appeal from judgment of May 29-75 manifest mailed to U.S.Atty. by deft atty.
6-9-75	SIDNEY STEIN -Filed affdvt.of Frank H. Wohl, AUSA in support of a writRet.forthwith.
6-18-75	E.REYNOLDS - · Filed memo endorsed on unsigned orderThe proposed order***is denied. Motley, Jm/n
6 6-19-75	L.LEVINE - Filed affdvt. & notice of motion for order pursuant to Rule 38(3) and (4) staying pending determination of appeal the order of May 29-75
Jun 19-75	Thed 'emorandum of law in support of post-trial motions of defts. Rubicson & Levine.
un 19-75	Filed Coverament's memorandom of law in opposition to post-trial motions
Jun 19-79	Filed Government's to corandum of law in opposition to motions.
Jun 19-7	File Covernment's affidarit in opposition to deft. Levine's motion.
Jun 19-7	Tiled effdvi. In opposition to post-trial motion of deft. Rubinson.
Jun 19-7	Filed deft. Fei fer's notice of motion for judgment of acquittal.
Jun 19-7	FEINFUR: Fomorondum of lar in support of notion to dismiss,
Jun 19-7	TETETER: Affilavit of albert leiffer to: com, usation to counsel.
Jun 19-7	WAY-LEVING: Requests to charge.
6-20-75	NORMAN RUBINSON -,File the following parers received from Mag.Raby: Docket entry sleet
	Appearance Bong
6-23-75	L.LEVINE & N. RUBINSON - Filed designation of exhibits by stip.
6-23-75	L.LEVINE & N. RUMINSON - Filed stip.to forward supplemental record.
6-23-75	N. rRUBINSON - Filed notice that the original record on appeal has been certified and transmitted to the U S.C.A.
6-30-75	PHILIP KAYE daft's affdyt. and notice of motion for reduction of sentence pursuant to F.R.C.P. 35
Jodets -	LAWRENCE LEVINE affdvt. of John J. Grimes and notice of motion for an order pursuant to make 38 (3) and (4) FRCP, directing the Clerk of the Court
5111	to return a check in the amount of \$ 10,000., deposited with the Clerk, to LAWRENCE: LEVINE.
Jul 11-7	LEVINE: Filed affidavit of Asst. U.S. Atty. Jupiter in opposition to payment out of the registry of the Court.

	PROCEEDINGS	Date Order or Judgment Noted			
1-75	LAWRENCE LEVINE filed Order that the Clerk of this Court, return, forthwith the check, in the amount of \$10,000.00 forwarded to this Court, to awrence Levine or to his attys., Shea Gould Climenko Kramer & Casey Motley J (m/n)	, . 71 % a.			
11-176	Fled transc 10 c				
2173		-			
1-75	Ded transcrip : : : : : possedings det 1 7/2/ 15 1975	•			
21-15	transcript proceedings det may 15, 1975				
27-25	transcript (.a. ! ! proceedings de .), 2/12, 1725				
11-13	Filed transcrip ' . I to condings, detgil 10 16 12 73				
1-3	transcript of record of proceedings, de 22 22, 1272				
7	a period of ONE YEAR and ONE DAY and on condition that the deft be confined in a jail type institution for a period of THREE MONTHS, the execution of the gremainder of the sentence of imprisonment is suspended and the deft is placed or probation for a period of NINE MONTHS and ONE DAY, subject to the standing probation order of this Court, pursuant to Ti.18, U.S.Code, Section 3651				
75	SIDNEY STEIN - Filed motion for mitigation of sentence.				
75	SIDNEY STRIN - Filed memorandum in support of motion for mitigation of sentence.				
	MORMAN RUBINSON - Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.				
6-75					
	SIDNEY STEIN - Filed writ with marshals return				
75	SIDNEY STEIN - Filed writ with marshals return EDGAR REYNOLDS - Mailed original CJA copy 1 to A.O. Wash.for paymentMotley, J.				
75	EDGAR REYNOLDS - Mailed original CJA copy 1 to A.O. Wash.for paymentMotley, J. INORMAN RUBINSON, - Filed opinion #42760*** the court concludes that a mistrial as Lewise should not be declared or a judgment of acquittal entered**** This is not	t.p.			
-75 -75 -75	EDGAR REYNOLDS - Mailed original CJA copy 1 to A.O. Wash.for paymentMotley, J.	tp e es			

DATE	Govt s.	Judgm-at
-19-75	LAWRENCE LEVINE - Filed notice of motion for and order modifying the findings of Courts opinion dtd.7-28-75	•
8-19-75	Filed affdvt.of Frank H.Wohl, AUSA in support of above motion.	
25-75	Filed affdvt.of Jo Ann Harri, AUSA in support of Govt's motion for modification of certain findings in Court's opinion dated 7-28-75	
-28-75×	SIDNEY STEIN - Filed request for oral argument	
-4-75	Filed affdvt.of Frank H. Wohl, AUSA in support of Govt's motion seeking modification of opinion dtd. 7-28-75	a
4-75	Filed affdvt. of Daniel J.Schatz, investigator S.E.C. dtd.9-3-75	
(9-10-75	Filed affdvt.or Thomas A/Andrews in response to affdvts of D.SE Schatz and F.Wohl	
-23-75	L.LEVINE - Filed memo endorsed on motion filed 8-19-75****After hearing this date the Courts opinion is amended on the top of page 19 in the last sentence of the first paragraph*****as indicated on the recordMotley, I.	
0-06-75	WILLIAM CHESTER- filed Order deferring probation period until determination of his appeal So ordered- MONIEY, J. (m/n)	
10-20-75	SIDNEY STEIN - Filed memorandum in response to defts motion for reduction of sentence	•
10-23-75	SIDNEY STEIN - Filed memo endorsed on request for mitigation of sentence filed 8-28-75***The court has reviewed the lengthy motion***and denies the requested oral argument and denied the motion to reduceMotle U.S.Atty notifiedNo local counsel listed.	y,J.
1-5-76	Filed Transcript of Proceedings dtd. 12/20/74	
-5-76	Filed notice that the sopplemental record on appeal has been certified and transmitted to the U.S.C.A	-
-23-76	Filed petition for reconsideration of motion for mitigation of sentence and request for oral argument.	-
3-9-76	SIDNE STEIN - Filed memo endorsed on petition for reconsideration filed 123-76 Petition for reconsideration denied,See Courts statement at time of sentenceMotley, J,.Mailed notice	-
-12-76	SIDNEY STEIN - Filed notice of appeal from Order entered on March 9,1976 Copy given to U.S.Atty. and mailed to deftC/o Leonard R.Glass,Est	
231-74	filed transcrip it so d if precendings, dated 1/21/41	
-1-76	SIDNEY STEIN - Filed notice that the supplemental record on appeal has been transmitted to the U.S.C.A.	

- Sa PAGE 13

13 Piled True copy of U.S.C.A. opinion and order affirming judgments of District Court .. Judgment Entered 4 19-76. U.S. Atty. notified and was notice colds mailed .. NOWAN RUBINSON - Filed affdet & notice of motion for an order directing that deft serve sentence at Fed. Prison, Egilin Aliforce Base. . . Ret. 5-4-76 4-30-76 5-5-76 N.RUBINSON - Filed memo endorsed on motion filed 4-30-76.... The within motion is granted***deft to surrender at said base at 10:00 a.m. May 6-76. Motley, J. m/n 05-10-76 N. RUBINSON: Defendant addresses servered at Egillaton Allierce Base for service of sentence on day 1976. for service of content on the NORMAN RUBINSON: It is discontinent a entered return, Deft, delivered to 21-76 Warden 19H on J.P. 6-8-76 SIDNEY STEIN - Filed altity: . . notice of notion for an order to inspect and copy certain senied resource, etc. .. set. .. 14-16..... 5.STEIN - Filed memo ender ret in metion filed 6-8-76.... There being no apposition from the govt. the within motion is changed.....Motley,J....m/n S.STEIN - Filed consent to change acty, to Phillips, Nizer, Benjamin, Krim & Ballon -10-76 40 W. 57th St. NYC So Ordered Notley . J. SIDNEY STEIN - Filed Order granting deat's metion for exam of sealed -17-76 documents in above captioned matter is amended to specify that all such documents are to remain healed subjectly to defense counsels Not the Arty exam. So Ordered MOTLEY, J 7-2-76 SIDNEY STEIN - Filed Notice that original record on appeal has been transmitted to the USCA 2nd Circuit this day. Just setter from trock tothe to fully Thought to the deven I 4 the 72 16 7-30 76 SIDNEY STEIL: Filed envelope containing transcript of proceedings dited March 28, 1975 and ordered scaled and impounded by Judge Mottey. 7-27--76 Filed (SIDNEY STELA) consent order that the Clerk of the Cart transmit to the Court of oppeals one manila envetore appointed on Maca, 20 - 1 & the transcript of the min tes of March 2'. 197' ordered sealed and that upon the return from the USCA these documents he placed back in valt MOTLEY J. S.STEIR- Filed notice that the supplemental record on appeal has been contilled 7-30-76 and transmitted to the U.S.C.A. WORDAN REPORTSON --- Filed Order- constraint Hr. Mahamon's letter of 2-0-76 to 8-12-76 a motion for reduction of sentence-- the motion is denied. To semante-(doft . not find) MOTLEY, J.

9-1-76

June 18, 1976 may filed and trusmitted to the ".". Court of Appeals as port of the record on appeal.

1-76 | 3. STEIM: Filed letter dated have 18, 1976 of poyld of "foody, M.D.

er presidentent e attendenten in it

74 Cr.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK UNITED STATES OF AMER 'A, - v -INDICTMENT NORMAN RUBINSON. SIDNEY STEIN, ALBERT FEIFFER WILLIAM CHESTER,

JEROME HASKELL LAWRENCE LEVINÉ, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER.

EDGAR REYNOLDS,

Defendants.

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of August, 1968, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER, the defendance herein, and Saul Weitzman, Louis Larry Hochen, Harry Silber, Arthur Kravetz, Yehuda Weiss and B'Noth Jerusalem, named herein as co-conspirators but not is defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 (Sections 77e, 77q, 77x, 78j and 78ff of Title 15, United States Code) and Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission and Sections 1341 and 1343 of Title 18, United States Code.

- 2. It was a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly would, directly and indirectly, make use of means and instruments of transportation and communication in interstate and foreign commerce and of the mails to sell securities, to wit, common stock of Stern-Haskell, Inc., at a time when no registration statement as to said securities was in effect with the United States Securities and Exchange Commission.
- 3. It was further a part of said conspiracy that said defendants and co-conspirators unlawfully, wilfully and knowingly in the offer and sale of securities, to wit, common stock of Stern-Haskell, Inc., by the se of means and instruments of transpositation and communications in interstate commerce and by use of the mails, would directly and indirectly (a) employ devir , schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not milleading; and (c) engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchasers of the common stock of Stern-Haskell, Inc., and upon any and all persons to whom the said defendants and co-conspirators, directly and indirectly, would attempt to sell the aforementioned securities.
 - 4. It was further a part of said conspiracy that said defendants and co-conspirators in connection with the purchase and sale of securities, to wit, common stock of Stern-Haskell, Inc., would, directly and indirectly, use

means and instrumentalities of interstate commerce and the mails to use and earloy manipulative and decentive devices and contrivances in contravention of Rule 10b-5[17 CFR Section 240. 10b-5] of the Rules and Resulations of the United States Securities and Exchange Commission.

- 5. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice and attempting so to do, would place and cause to be placed in post offices and authorized depositories for mail matter, and would cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the United States Postal Service.
- 6. It was further a part of said conspiracy that said defendants and co-conspirators, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, would transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing said scheme and artifice.
- 7. Among the means by which the defendants and co-conspirators would and did carry out the said conspiracy were the following:
- (a) Defendants NORMAN RUBINSON, SIDNEY STEIN, WILLIAM CHESTER and JEROME HASKELL arranged for the issuance and distribution of 200,000 shares of the common stock of Stern-Haskell, Inc., without the filing by Stern-Haskell, Inc., of a registration statement, prospectus or certified financial statements with the United States Securities and Exchange Commission.

- (b) Defendants NORMAN RUBINSON and WILLIAM CHESTER arranged for Stock Transfer A ency, which they controlled, to act as the transfer agent of Stern-Haskell, Inc.
- (c) Defendants NORMAL RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, ELGAR REYNOLDS and JEROME HASKELL arranged to own or control over 150,000 of said 200,000 shares of the common stock of Stern-Haskell, Inc.
- (d) Defendants NORMAN RUBINSON, WILLIAM CHESTER and JEROME HASKELL arranged for the issuance of an additional 350,000 shares of the common stock of Stern-Haskell, Inc., which would be owned or controlled by themselves.
- (e) Defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, LAWRENCE LEVINE, WALTER WAX, JEROME MASKELL and MICHAEL GARDNER arranged for the establishment and maintenance of a public market in the common stock of Stern-Haskell, Inc., at artificially inflated, manipulated and fraudulent prices ranging from one dollar per share to over four dollars per share.
- (f) Defendants NORMAN RUBINSON, JEROME
 HASKELL and MICHAEL GARDNER arranged for defendant MICHAEL
 GARDNER to receive 50,000 shares of the common stock of
 Stern-Haskell, Inc., at a price of ten cents per share at a
 time when the market price of said shares was in excess of
 two dollars per share, in return for the assistance of
 MICHAEL GARDNER in distributing the common stock of SternHaskell, Inc. to the public at artificially inflated,
 manipulated and fraudulent prices.
- (g) Defendants NORMAN RUBINSON, SIDNEY STEIN, and ALBERT PEIFFER made secret cash payments to defendants LAWRENCE LEVINE, PHILIP KAYE and WALTER WAX in return for the distribution by defendants LAWRENCE LEVINE, PHILIP KAYE and WALTER WAX of the common stock of Stern-Haskell, Inc.,

to the public at artificially inflated, manipulated and fraudulent prices.

- and PHILIP KAYE arranged for recommendations to be made to members of the investing public to purchase the common stock of Stern-Haskell, Inc., without disclosing said secret cash payments, or said defendants' activities in connection with the marketing of said securities, or the facts that the prices of said securities were artificially inflated, manipulated and fraudulent, or other facts which would have been disclosed in a prospectus if one had been issued, such undisclosed facts being material facts, necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.
- (1) Defendants NORMAN RUBINSON, SIDNEY STEIN,
 ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, LAWRENCE
 LEVINE, PHILIP KAYE, WALTER WAX and MICHAFL GARDNER directly
 and indirectly sold over 75,000 shares of the common stock
 of Stern-Haskell, Inc., to the public at artificially
 inflated, manipulated and fraudulent prices, at a time when
 no registration statement was in effect as to said securities.
- (j) Defendants NORMAN RUBINSON, SIDNEY STEIN,
 ALBERT FEIFFER, WILLIAM CHESTER, EDGAR REYNOLDS, JEROME HASKELL,
 LAWRENCE LEVINE, PHILIP KAYE, WALTER WAX and MICHAEL GARDNER,
 through the activities described above in this paragraph,
 would and did cause members of the investing public to lose
 substantial amounts of money.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts were committed within the Southern District of New York and elsewhere:

1. In or about May and June, 1969, defendants
NORMAN RUBINSON and SIDNEY STEIN paid a quantity of cash to

defendant PHILIP KAYE in the vicinity of 360 East 7.nd Street, New York, New York.

- In or about May and June, 1969, defendant LAWRENCE LEVINE received a quantity of cash.
- 3. In or about May and June, 1969, defendant WALTER WAX received a quantity of cash.
- 4. On or about June 6, 1969, defendants SIDNEY STEIN, WILLIAM CHESTER and EDGAR REYNOLDS met in the vicinity of 360 East 72nd Street, New York, New York.
- 5. On or about June 6. 1969, defendant ALBERT FEIFFER endorsed a check from Tessel, Paturick & Ostrau, Inc. in the amount of approximately \$11,941.75.
- 6. On or about June 13, 1969, defendant ALBERT FEIFFER endorsed a check from Tessel. Paturick & Ostrau, Inc. in the amount of approximately 110,264.94.
- 7. On or about June 9, 1969, defendant LAWRENCE LEVINE made a transaction in the common stock of Stern-Haskell, Inc.
- 8. On or about June 12, 1969, defendant WALTER WAX recommended the purchase of the common stock of Stern-Haskell, Inc., to a customer.
- In or about July 1969, defendants NORMAN RUBINSON and JEROME HASKELL met in New York, New York.
- 10. On or about July 18, 1969, de endant MICHAEL GARDNER received 50,000 shares of the common stock of Stern-Haskell, Inc.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH SIX

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Two through Six, in the Southern District of New York, NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWKENCE LEVINE, PHILIP KAYE, WALTER WAX, and MICHAEL GARDNER, the defendants,

unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, common stock of Stern-Haskell, Inc., by the use of means and instruments of transportation and communications in interstate commerce and by use of the mails, (a) did employ devices, schemes and artifices to defraud: (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; and, (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon purchasers of said securities and other persons whom the defendants and co-conspirators directly and indirectly, attempted to induce to purchase said securities.

- 2. The allegations contained in paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Two through Six.
- 3. On or about the dates hereafter set forth, in Counts Two through Six, among others, in the Southern District of New York and elsewhere, NORMAN RUBINSON, SIDNEY STEIN, ALBERT PEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, PHILIP KAYE, WALTER WAX and MICHAEL GARDNER, the defendants, unlawfully, wilfully, and knowingly did use, and cause to be used, the mails, bursuant to and in furtherance of the scheme alleged in paragraph one of these counts, by causing to be sent through the mails, to the addressees set forth below, the matter set forth below:

COUNT	DATE	ADDRESSEE	MATTER
2	June 6, 1969	ALLAN FEIFFER 360 East 72nd St. New York, New York	Confirmations of sale of 4000 shares of the common stock of Stern-Haskell, Inc.

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n-443b

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(Title 15, United States Code, Sections 77g and 77x and Title 18, United States Code, Section 2).

COUNT 3 SEVEN AND EIGHT

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Seven and Eight, in the Southern District of New York, the defendants NORMAN RUBINSON, SIDNEY STEIM, ALBERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER, unlawfully, wilfully and knowingly did, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, use and employ in connection with the purchase and sale of securities, to wit, common stock of Stern-Haskell, Inc., manipulative, and deceptive devices and contrivances in contravention of Rule 10b-5 [17 CFR Section 240.10b-5] of the rules and regulations of the United States Securities and Exchange Commission.

The allegations contained in Paragraph 7 of Count One of

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this Indictment are remeated and resiliered as though fully set forth herein, as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Seven and Eight.

3. On or about the dates hereinafter set forth in Counts Seven and Eight in the Southern District of New York, the defendants NORMAN RUBINSON, SIDNEY STEIN, ALFERT FEIFFER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE, and MICHAEL GARDNER, unlawfully, wilfully, and knowingly did use and cause to be used means and instrumentalities of interstate commerce and the mails pursuant to and in furtherance of the scheme alleged in paragraph 1 of these counts, by sending and causing to be sent to the addressees hereinafter set forth the matter hereinafter set forth:

COUNT	DATE	ADDRESSEE	MATTER
7	June 12, 1969	Lena Dundish 522 Ocean Avenue Brooklyn, New York	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell, Inc.
8	June 11, 1969	Paul E. Schuchalte and Mrs. Dorothy Schuchalter 30 First Street Suffern, New York	the purchase of 200 shares of the common stock

(Title 15, United States Code, Sections 78j and 78ff; and Title 18, United States Code, Section 2; and Title 17, Code of Federal Regulations, Section 240.10b-5.)

COUNTS NINE THROUGH THIRTEEN

The Grand Jury further charges:

1. On or about the dates hereinafter set forth in Counts Nine through Thirteen in the Southern District of New York, defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFPER, WILLIAM CHESTER, JEROME HASKELL, LAWRENCE LEVINE, WALTER WAX, PHILIP KAYE and MICHAEL GARDNER unlawfully, wilfully and knowingly did devise and intend to devise

Haskell, Inc., one to pate:

Dersons by means of Calse and the second and promises and the second and

- 2. The allegations contained in Paragraph 7 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which said defendants countitted the offenses charged in Counts Nine through thirteen hereis.
- 3. On or about the dates hardinafter set forth: in Counts Hine through Thirteen, in the Couthern District of Hew York, said defendants unlawfully, wilfully and knowingly did cause to be placed in post offices and authorized depositories for mail, and did cause to be delivered by mail by the United States Postal Service, according to the directions thereon, to the addressees hereinafter set forth;

COUNT	DATE	ADDRESSEE	MATTER
9	June 16, 1969	Prudential 1313 N.E. 125th Street Miami, Florida	Confirmation of the purchase of 150 shares of the common stock of Stern-Haskell, Inc.
10	July 9, 1969	Prudential 1313 N.E. 125th Street Miami, Florida	Confirmation of the purchase of 425 shares of the common stock of Stern-Haskell, Inc.
11	August 21, 1969	522 Ocean Avenue	Confirmation of the purchase of 200 shares of the common stock of Stern-Haskell. Inc.

7			7,
l c	Aumunt 2011, and	Expon Altschuler Reconvelt Terrace Bayonne, New Jersey	Confirmation of the nurchase of 2000 shares of the common stock of Stern- liaskell, Inc.

August 25, 1969

B'Noth Jerusalem Confirmation of the 157 Hewes Street sale of 5000 shares Brooklyn, New York of the common stock of Stern-Haskell, Inc.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

On or about June 6, 1969, in the Southern District of New York and elsewhere, defendants NORMAN RUBINSON, SIDNEY STEIN, ALBERT FEIFFER, WILLIAM CHESTER and EDGAR REYNOLDS unlawfully, wilfully and knowingly, directly and indirectly, caused to be carried by means and instruments of transportation in interstate commerce from in or about Miami Florida to in or about Brooklyn, New York, for the purpose of sale and delivery after sale, securities, to Mit, common stock of Stern-Haskell, Inc., when no registration statement as to such securities was in effect with the United States Securities and Exchange Commission.

(Title 15, United States Code, Sections 77e and 77x; Title 18, United States Code, Section 2.)

COUNTS FIFTEEN THROUGH EIGHTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth in Counts Fifteen through Eighteen, in the Southern District of New York, defendants NORMAN RUBINSON, ALBERT FEIFFER, SIDNEY STEIN, WILLIAM CHESTER and EDGAR REYNOLDS unlawfully, wilfully and knowingly, directly and indirectly, made use of the mails and caused the mails to be used to sell securities, to wit, common stock of Stern-Haskell, Inc., in that said defendants did cause the mails to be used to send to the addressees hereinafter set forth, the matter hereinafter set forth, when no registration statement as to such securities was in

effect with the United States County's and Exchange Commission:

COUNT	DATE	AL PRECENT	MALTE
15	June 19, 1969	157 Hewen Street Brooklyn, Het York	Confirmations of the sale of 8000 shares of the common stock of Stern-Haskell, Inc.
16	August 22, 1969		Confirmation of the sale of 13,500 shares of the common stock of Stern-Haskell, Inc.
17	August 25, 1969	Michard M. Marren and Rose 1. Marren 2 Matson Avneue .orth Haven, Connecticut	shares of the
13	August 28, 1969	2012 1 July 1982 2007 1 July 1982 2013 2013 2013 2013 2013 2013 2013 2013 2013 2013	

(Title 15, United States Code, Section 77e and Title 18, United States Code, Section 2.)

COUNTS NIMETEEN AND TWENTY

The Grand Jury further charges:

- 1. On or about the dates hereinafter set forth in Counts Nineteen and Twenty, in the Southern District of New York, defendants NORMAN RUBINSON, WILLIAM CHESTER and MICHAEL GARDNER unlawfully, wilfully and knowingly did devise and intend to devise a scheme to defraud recipients of the common stock of Stern-Haskell, Inc., and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce signs, signals and sounds, as more particularly set forth below.
 - 2. The allegations contained in Paragraph 7 of

Count one of this in interest are perested one realiesed to though fully set forth berein as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Nineteen and Twenty.

3. On or about the dates hereinafter set forth in Counts Nineteen and Twenty in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce signs, signals and sounds between the parties hereinafter set forth:

COUNT	DATE	PARTIES
19	July 24, 1	Bernard H. LaLone New York, New York and John Carroll, Mcntreal, Canada.
20	December 3	Defendant MICHAEL GARDNER, New York, New York and John Carroll, Montreal, Canada.

(Title 18, United States Code, Sections 1343 and 2.)

PAUL J. CURRAN United States Attorney

FOREMAN

MINUTES OF GUILTY PLEA, DATED JANUARY 9, 1975 c. a. m! UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 3 THE UNITED STATES OF AMERICA 5 - vs -74 CR. 573 6 NORMAN RUBINSON, SIDNEY STEIN, et al. 7 8 9 January, 1975 9 5:10 p. m. 10 Before: 11 Hon. CONSTANCE BAKER MOTLEY, United States District Judge 12 13 Appearances: 14 15 For The Government: FRANK WOHL, Assistant United States Attorney 16 For The Defendant 17 Sidney Stein: LORANCE HOCKERT, ESO. 18 19 20 21 22 23

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(In the Robing Room)

THE COURT: All right, Mr. Hockert, you repredefendant Sidney Stein?

MR. HOCKERT: Yes, Your Honour.

THE COURT: Did you want to say something, Mr.

Wohl?

ce.

MR. WOHL: Yes, Your Honour. We have requested that this pleading take place in the robing room and we also request that the minutes be ordered sealed, at least until we have an opportunity to examine them and see whether there is anything in them that should be sealed thereafter. It may be that some things will be said that chould be brought to the attention of defense counsel in the upcoming trial. On the other hand, it also may be that some things may occur which should remain sealed and we would request therefore that the minutes be sealed until The Government has an opportunity to examine them.

THE COURT: Well, let's hear what transpires first, then you can make the motion at the end.

MR. WOHL: All right, Your Honour.

THE COURT: I understand that defendant intends at this time to plead guilty to counts one, seven and fourteen of indictment 74 Crim 573; is that correct?

MR. HOCKERT: That's correct.

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THE COURT: Mr. Stein, is this your signature on the petition to plead guilty?

DEFENDANT: Yes, Your Honour.

THE COURT: And, Mr. Hockert, is this your signature on the attorney's portion?

MR. HOCKERT: Yes, it is.

THE COURT: Now, Mr. Stein, did you read over this petition with your attorney and discuss it?

THE DEFENDANT: Yes, Your Honour.

THE COURT: All right. The clerk is directed to file this petition to plead guilty to counts one, seven and forteen.

Now, Mr. Stein, you previously entered a plea of not guilty to count one, count seven and count fourteen.

Do you now wish to withdraw your previously entered pleas of not guilty to those counts and plead guilty at this time?

THE DEFENDANT: Yes, Your Honour.

THE COURT: How old are you, Mr. Stein?

THE DEFENDANT: Forty-eight.

THE COURT: How much education have you had?

THE DEFENDANT: I had some college. About three years of college. About three years of night college. I

went to college at night, graduated high school.

THE COURT: Where did you graduate from high

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Brooklyn.

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school?

THE DEFENDANT: New otrecht High School in

THE COURT: New Utrecht High School, Brooklyn?

THE DEFENDANT: Yes.

THE COURT: Where did you attend college?

THE DEFENDANT: I went to Pace Institute and to Brooklyn College and to NYU.

THE COURT: Have you discussed this case with your attorney?

THE DEFENDANT: Yes, I have.

THE COURT: Have you given him all the fact. concerning these counts to which you are any offerring to plead guilty?

THE DEFENDANT: Yes, I have, Your Honour.

THE COURT: Have you discussed with your attorney any possible defense or defenses that you might have to these charges?

THE DEFENDANT: Yes, I have.

THE COUPT: Are you satisfied that your attorney has fully considered all of the facts and any possible defense that you might have?

THE DEFENDANT: Yes, I have.

THE COUPT: Do you understand that by pleading

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quilty to count one The Court might sentence you to a term of imprisonment up to five years?

THE DEFENDANT: Yes, I understand that.

THE COURT: And in addition may impose a fine of up to \$10,000?

THE DEFENDANT: Yes, Your Honour.

THE COURT: Do you understand that by pleading guilty to count seven The Court may impose a prison term up to two years?

THE DEFENDANT: Yes, Your Honour.

THE COURT: And, in addition, may impose a fine up to \$10,000?

THE DEFENDANT: Yes, I understand that.

THE COURT: Do you understand that by pleading quilty to count fourteen The Court may impose a prison term of up to five years?

THE DEFENDANT: Yes, Your Honour.

THE COURT: And in addition may impose a fine of up to \$5,000?

THE DEFENDANT: Yes, I understand that.

THE COURT: Have you read over count one of the indictment?

THE DEFENDANT: Yes.

THE COURT: Did you understand it?

THE DEFENDANT: Yes.

THE COURT: Tell me in your own words what you understand you have been charged with in count one.

THE DEFENDANT: I believe that's the conspiracy county.

THE COURT: Well, what does it charge that you did?

THE DEFENDANT: To conspire with others to sell unregistered stock and to manipulate a stock by the name of Stern Haskell.

THE COURT: Now, this is a very long count. Does the defendant waive the detailed reading of this count at this time?

MR. HOCKERT: Yes, Your Honour.

THE COURT: Have you read over with your lawyer and discussed count seven?

THE DEFENDANT: Yes.

THE COURT: Tell me in your own words what you understand you have been charged with in count seven.

THE DEFENDANT: I don't recall if it's unregistered stock or manipulation.

THE COURT: Well, let me read it to you, then.

THE DEPENDANT: It's either one or the other. I'm convused with the --

set forth in counts seven and eight in The Southern District of New York, the defendants. Norman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome Haskell, Lawrence Levine, Walter Wax, Philip Kaye and Michael Gardner, unlawfully, wilfully and knowingly did, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, used and employed in connection with the purchase and sale of securities, to wit, common stock of Stern Haskell, Incorporated, manipulative and deceptive devices and contrivances in contravention of Rule 10 (b) 5 of the Rules and Regulations of The United States Securities and Exchange Commission;

2) The allegations contained in paragraph seven, count one of this indictment are repeated and re-alleged as though fully set forth herein as constituting and describing some of the means by which said defendants committed the offenses charged in counts seven and eight.

On or about the dates hereinafter set forth in counts seven and eight in The Southern District of New York the defendants Horman Rubinson, Sidney Stein, Albert Feiffer, William Chester, Jerome Haskell, Laurence Levine, Walter Wax, Philip Kaye and Michael Gardner, unlawfully, wilfully and knowingly did use and cause to be used means and in-

strumentalities of interstate commerce and the mails pursuant to and in furtherance of the scheme alleged in paragraph one of these counts by sending and causing to be sent to the addressees hereinafter set forth the matter hereinafter set forth.

Count seven, date June 12, 1969, address Lena Dundish, 5220 Ocean Avenue Brooklyn, New York, matter, confirmation of purchase of 200 shares of common stock of Stern Haskell, Incorporated.

Now tell me in your own words what you understand you have been charged with.

THE DEFENDANT: I have been charged with, in this count, manipulating stock.

THE COURT: Do you understand you have been charged with using the instrumentalities of interstate commerce and the mails in furtherance of a scheme to manipulate the stock in violation of the Securities Laws?

THE DEFENDANT: Well, my understanding is that in all security transactions that when a confirmation is sent to a customer or to a broker that The Government usually puts the mail fraud section into the same kind of count and re-alleges it.

THE COURT: Now, in count fourteen, I will read that to you, and then you tell me im your own --

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THE DEFENDANT: I think I understand that one, your Honor.

THE COURT: You do?

THE DEFENDANT: Yes, I just had the numbers confused. That deals with the sale of unregistered stock.

THE COURT: You understand you have been charged with the transportation in interstate commerce from Miami to Brooklyn of stock which had not been registered?

THE DEFENDANT: Yes.

THE COURT: Do you feel that any of your constitutional rights have been violated in any way in connection with your property, your arrest or these proceedings?

THE DEFENDANT. No, your Honor.

THE COURT: Were any motions filed on behalf of this defendant.

MR HOCKERT: No, your Honor.

THE COURT: Are you pleading guilty because of some statement of confession you may have made when you were arrested, or to the United States Attorney or to some other law enforcement agent?

A Well I don't think I quite follow -- I am not pleading guilty because of anything that I said when I was arrested. I am pleading quilty because I understand the indictment and I believe defending the indictment would

not prove to my benefit and I have had complete discussion with the U. S. Attorney and the SEC people and my attorney with regard to my being a witness and assisting them and they would then therefore tell the Court of my cooperation in this and many other matters. I think that my attorney can better say I and perhaps the U. S. Attorney can.

THE COURT: Well, let me ask you this:

Did you make a statement to the U.S. Attorney about your involvement in this case?

THE DEFENDANT: Yes, I did.

THE COURT: When did you make the statement?

THE DEFENDANT: I would say sometime after the

plea. Or perhaps before.

THE COURT: After the indictment?

THE DEFENDANT: Yes. No, I think we had a discussion prior to the indictment. Yes, I think it was prior to the indictment that I talked to the U.S. Attorney.

THE COURT: Well, let me ask you this:

Before you made any statement, were you advised of your constitutional rights by the U. S. Attorney?

THE DEFENDANT: I am sure I was, but I can't specifically recall it. I am sure I was. I was with an attorney at the time.

THE COURT: Your attorney was present?

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A Yes, your Honor.

MR. HOCKERT: That was another attorney, your Honor, not myself.

THE DEFENDANT: That was an attorney by the name of Neal Sohn.

THE COURT: Do you recall being advised that you had a right to remain silent?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you recall being advised that you had the right to step at any time you wished during the examination?

THE DEFENDANT: Yes, your Honor.

THE COURT: You say your attorney was present at the time?

THE DEFENDANT: He was present at the original--

THE COURT: What was his name?

THE DEFENDANT: Neal Sonnett, S-o-n-n-e-t-t, and he is from Miami.

THE COURT: Were you told that any statement you made at thattime might be used against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Let me ask you this:

Do you feel that any statement that you made at that time was freely and voluntarily made? REST CAPY AVAILAR

THE DEFENDANT: Yes, your Honor.

THE COURT: Were you promised anything at that time to get you to make the statement?

THE DEFENDANT: I wasn't promised anything other than the fact that I would -- that the Court would be made aware of anything that I would do to be helpful to the Government in this case or any other cases that I have -- cooperated in.

THE COURT: Were you threatened by anyone to get you to make the statement?

THE DEFENDANT: No, I was not.

MR. WOHL: Your Honor, there is a more complete understanding between the Government and Mr. Stein and his counsel that I believe the Court should be informed of.

THE COURT: Well, we will get to that in just a minute, I am talking about the time he made the statement earlier.

MR. WOHL: I am sorry.

THE COURT: Has anyone now, including your own attorney or the United States Attorney, made any promises to you that you would be dealt with leniently by the Court if you would plead guilty at this time?

THE DEFENDANT: No, your Honor. They have told

me that it is completely at your Honor's discretion and that all they would do is advise and tell you everything that I have done in this case and in many other cases.

THE COURT: Has anyone threatened you to get you to plead guilty at this time?

THE DEFENDANT: No, your Hor , they have not.

THE COURT: Has anyone, including your own attorney or the United States Attorney, made any other. promises to you other than leniency if you would plead guilty at this time?

agreement that was reached between Mr. Sonnett and Mr. Wohl, and I guess the rest of the United States Attorney's Office, whereby as long as I am not involved with any other wrong doings and that I rehabilitated myself and that I make a full disclosure or debrief myself of anything that I have been involved in that I wouldn't be indicted in any other matters.

And that they would tell the Court of all of the good deeds I have done and that the Court will consider it. But they have made no promises to me as to what your personal decision would be.

THE COURT: Well, let me ask you about the other counts in this indictment in which you are named.

17.

Has any promise been made to you with regard to the remaining counts in this indictment?

A No. They have told me that they will -- in fact my attorney just asked that question and he said those counts would be decided upon at the sentencing, I quess is the word.

THE COURT: Did he tell you that they would move to dismiss these counts after the sentence?

THE DEFENDANT: I don't quite -- I don't -- what was the response to the question?

MR. HOCKERT: You weren't told that were you?

THE DEFENDANT: No, I wasn't told that. But you asked some kind of question before and I don't know what your answer was really.

THE COURT: Well, let me understand then, you were told that if you pled guilty at this time you would not be prosecuted in any other case if you did what?

THE DEFENDANT: No, I was told that if I were to debrief -- be debriefed and tell the Government--

THE COURT: If you would read the brief?

THE DEFENDANT: Be debriefed on all of the securities dealings that I have been involved in or anything of any wrongdoing, other than subversion or act of violence or espionage that I would not be prosecuted for anything

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unless I did something from the date of the understanding till now.

THE COURT: I see. Anything up to that point that you were involved in you would not be prosecuted for.

THE DEFENDANT: Yes, ma'am. Right.

MR. WOLH: Your Honor, we have gone over this understanding very specifically with Mr. Stein and I think it might be appropriate if I put it on the record at this time.

THE COURT: Put it on the record, all right.'

MR. WOHL: The understanding is, your Honor, that in addition to his guilty plea in this case Mr. Stein will cooperate with the Government in any way that he can. That cooperation will include a full and complete and truthful debriefing of any of his illegal activities in the past.

It will also include full and complete and truthful testimony at any time that he is summoned to testify. It will also include other matters which I don't see any point in putting on the record at this time.

The Government has agreed that Mr. Stein, if he does that, will not be prosecuted for crimes that he tells the Government about, except crimes, if they should come to light, of a type vastly different from the types of crimes that the Government knows Mr. Stein to have been involved in.

We don't know of his participation in any crimes such as espionage or crimes of severe violence, but the point is, and Mr. Stein understands it, that in the event that he were to tell us that he had committed so extraordinary type of crime completely different in quality from the types that we have been talking about, then he could be prosecuted for that.

cuted for any crime which he has committed prior to this date which he does not tell the Government about, but which the Government finds out about through some other source. It is also part of the understanding that Mr. Stein, from this day, and I should say from May of 1974, must commit no other crimes and that if he does commit any other crimes he will be prosecuted vigorously to the full extent of the law for not only those crimes but also all of the crimes that he has told the Government about. Because, in effect, if the Government finds out that from this date on he has committed any additional crimes, then as you might say, the deal is off and he can be prosecuted for any of the prior crimes he has told us about.

It is also understood that his cooperation will be made known to your Honor at the time of sentencing, and that whatever sentence he is to receive in this case is

entirely within your Honor's discretion and no one from the Government has suggested that they have any ability to predict that sentence or to control that sentence.

THE COURT: Is that correct, Mr. Stein?

THE DEFENDANT: That's absolutely correct, your Honor.

THE COURT: Do you understand that by pleading guilty to these counts you give up your right to be tried by 12 citizens from this district?

THE DEFENDANT: Yes, your Honor.

THE COURT: All of whom would have to be convinced of your guilt beyond a reasonable doubt before you could be found guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you went to trial you would not have to say anything?

THE DEFENDANT: I understand that, your Honor.

THE COURT: But the Government would have the burden of proving your guilt beyond a reasonable doubt before you could be found guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that if you went to trial you would have the right to cross examine the Government's witnesses against you?

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THE DEFENDANT: Yes, your Honor.

THE COURT: And that you would have the right to call witnesses in your own behalf?

THE DEFENDANT: Yes, your Honor.

THE COURT: And understanding all these rights to a trial, do you now want to give them up and plead guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that your trial is to commence on January the 14th?

THE DEFENDANT: Yes, your Honor.

THE COURT: And that that would be a public trial if you had gone to trial?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you under the influence of any drug or alcohol at this time?

THE DEFENDANT: No, I am not.

THE COURT: Have you ever been the subject of any psychiatric care or treatment?

THE DEFENDANT: Yes, I have.

THE COURT: When was that?

THE DEFENDANT: Well, actually, I still go to a psychiatrist now. I was at the Springfield Medical Center about two years ago.

THE COURT: How long were you there?

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THE DEFENDANT: I was there for about three months.

THE COURT: Have you -een in any other hospital? THE DEFENDANT: I was in the hospital prior to being there, yes.

THE COURT: When was that?

THE DEFENDANT: I believe in September of 1972.

THE COURT: Where was that?

THE DEFENDANT: In Miami, Florida, where I live.

THE COURT: How long were you there?

THE DEFENDANT: About a month.

THE COURT: Were you in any other hospital?

THE DEFENDANT: For psychiatric reasons?

THE COURT: Yes.

THE DEFENDANT: No, ma'am -- no, your Honor.

THE COURT: And you are presently seeing a

psychiatrist?

THE DEFENDANT: Yes.

THE COURT: Let me ask you this:

Do you feel that you have understood everything which has transpired here today and that you are competent to make this decision and to plead guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: And is this your decision to plead

guilty?

THE DEFENDANT: Yes, it is, your HOnor.

THE COURT: Are you entering this plea freely and voluntarily?

THE DEFENDANT: Yes, your Honor.

THE COURT: And as a result of your own reasoning processes?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. Tell me what you did from on or about August 1st, 1968, up to and including the date of the filing of this indictment, which was June 4th, 1974 here in the Southern District of New York and elsewhere which shows that you are in fact guilty of conspiring to violate the securities laws as charged in Count 1 of the indictment.

THE DEFENDANT: Well, I can just briefly explain it this way, your Honor.

I should have known better as I did --

THE COURT: No, tell me what you did. You are charged with this and I can't accept your plea of quilty unless it appears that you are in fact guilty of conspiring with these other defendants to violate the securities laws.

THE DEFENDANT: I haven't thought about the kind of wording I want to use, so you will have to please for-

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give me if I don't say it like --

THE COURT: Well, you told me you understood the charge of conspiracy.

THE DEFENDANT: I do understand, your Honor,

Well, the sum and substance of why I am pleading guilty is that the conspiracy portion myself and Feiffer and Rubinson and Haskel and Chester and some of the other defendants whom I know and some of whom I don't know, we all received "X" amount of shares of stock and I personally, from my own mind did not believe that the shares were registered even though attorneys had given their opinion letters.

I just thought that it was a loophole around the law and I entered into it when I shouldn't have, knowing that, or believing really that they weren't registered and I don't know if they are or not now, but I believed that they weren't and that's why I am pleading guilty to it.

I don't know what the fine point of the law is but I believed it was a sham and I went along with it. And probably the person that helped them complete the sale of the stock by introducing him to the brokers that did the actual selling.

So, therefore I was involved in the conspiracy: And as far as the manipulation of the stock, I did partake --

participate with some of the principals in paying some of the brokers gratuities which is the manipulation of the stock.

So I think I have answered the explanation by combining the two points in the first statement and the third point in the last statement I made, your Honor.

THE COURT: Well, with respect to Count 1, you did conspire with these other defendants, some of whom you knew to sell unregistered stock, is that it?

THE DEFENDANT: Yes, your Honor.

THE COURT: And you in fact did sell some unregistered stock, or you saw to it that they were sold by brokers, is that it?

THE DEFENDANT: Yes.

THE COURT: And with respect to --

THE DEFENDANT: May I add something?

THE COURT: Yes.

THE DEFENDANT: I would like to add the words that were used in the securities, directly or indirectly. So what I am saying is that I either did it directly or indirectly according to how the circumstances were.

you knew that confirmations had been mailed to individuals
by brokers for the sale of these shares, is that it? Or

you knew that somebody had seen to that?

THE DEFENDANT: Well, I knew that at any time that any of our group were selling stock that the broker was buying it either as principal agent and he was selling it to somebody else.

I don't know those particular people that are named as having bought the stock.

But I have to assume that it flows from the same shares that we had to start with. Again, I think if I say directly or indirectly, perhaps I can clarify it.

THE COURT: Now, what about count 14, which charges transportation in interstate commerce from Miami to Brooklyn?

THE DEFENDANT: Well, again I think that the only way I can explain that is I have direct or -- I don't know, if I directly or indirectly carried the shares, but I have had -- I had knowledge of it.

THE COURT: Well, you caused or carried -- carried or caused to be carried, is that it, the shares?

THE DEFENDANT: Yes, caused --

THE COURT: From Florida to Brooklyn?

THE DEFF NDANT: Would that mean your Honor that

I knew about it and not actually physically carried it?

THE COURT: Yes, that's right.

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THE COURT: Yes, that's right.

THE DEFENDANT: The answer would be yes, your Honor.

MR. WOHL: I think it would be correct also to say that Mr. Stein participated in setting up the sale of those unregistered shares which was the reason why they were being transported.

THE COURT: I see. Is that right, Mr. Stein?
THE DEFENDANT: Yes, your Renor.

THE COURT: All right, do you have any questions you would like to ask the Court or your attorney at this time before I finally accept your pleas of quilty to counts 1, 7 and 14?

THE DEFENDANT: NO, your Honor.

MR. WOHL: Your Honor, I wonder if it would be possible for the Court to just clarify Mr. Stein referred to payments of gratuities to brokers in connection with count 7. Would your Honor mind --

THE COURT: I thought he said that in connection with Count 1 and indicated that it applied to Count 7, is that it?

MR. WOHL: That's right, I think so, your Honor.
THE DEFENDANT: Yes.

MR. WOHL: I wonder if your Honor would mind

asking Mr. Stein what he meant by that so that we can clarify it for the record.

THE COURT: All right. What did you mean by those payments?

THE DEFENDANT: Well, Rubinson, Feiffer and myself paid gratuities to the brokerage firm that was the main broker in distributing the shares.

"CHE COURT: What firm was that?

THE DEFENDANT: Lockwood and Company, to the other brokers and to the public.

MR. WOHL: I think it is unclear your Honor, when he is saying that he participated in paying the gratuities or saying that they were paid to someone at Lockwood or is he saying that he paid them to other people besides someone at Lockwood?

I would like to have that clarified.

THE COURT: Which do you mean?

THE DEFENDANT: I am saying to Lockwood and to Larry Levine and a fellow by the name of Phil Kaye, or Phillip Kaye, who was or was not directly associated with Lockwood.

I don't know if he was or wasn't, but I know that he was friendly with them or doing business with them.

THE COURT: You personally paid the payments?

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2	THE DEFENDANT: Yes. In some instances, yes.
3	THE COURT: How were those payments made?
4	THE DEFENDANT: They were made in stock and
5	cash, your Honor.
6	THE COURT: Well, were the mails used or how wer
7	they made, how were the payments made?
8	THE DEFENDANT: I don't believe the mails were
9	used.
0	THE COURT: They were made here in New York.
1	THE DEFENDANT: Yes, that's correct, your Honor.
2	THE COURT: And these confirmations were mailed
3	here from brokers in New York, is that it?
4	THE DEFENDANT: The ones that are in the indict-
5	/ ment?
6	THE COURT: Yes, referred to in Count 7.
7	THE DEFENDANT: I am not familiar with those as
8	individual people so I really don't know.
9	THE COURT: Well, in any event you knew that
0	confirmations would be mailed by these brokers who sold th
1	stock, isn't that so?
2	THE DEFENDANT: Yes, your Honor. We received
3	confirmations on our sales and the brokers that bought it.
4	from us would then in turn sell it to other brokers and

to people and they would mail confirmations to those people.

THE COURT: 'All right, the Court at this time accepts the plea of guilty of the defendant Sidney Stein to Count 1, 7 and 14 of indictment '74 Crim 573. The day of sentence will be Tuesday, March 18 at 11 o'clock.

Pre-sentence report will be required.

MR. WOHL: Your Honor, at this time I see no necessity for having the minutes scaled except that I would request that the statement I am making now and the portion I stated at the beginning, where I talked about sealing the minutes, be sealed, because I think that gives an impression that should not be made public.

THE COURT: Well, all right, your motion to seal the indictment and this statement withdrawing the motion will be sealed.

MR. WOHL: Thank you, your Honor.

MR. WOHL: Mr. Stein has been released on his own recognizance, your Honor, up to this point, and the Government would consent to continuing that status.

THE COURT: Until the day of sentence, all right
THE DEFENDANT: May I just say one more thing,
your Honor?

I have had experience where when you do get found guilty you can't leave the area and I live in Florida and the Judge has to normally sign an order and if you put it in now then you don't have to -- I don't have to come back up here tomorrow and bother your Honor, and I want to go back to Miami tomorrow.

I will report to the probation officer, but the Judge --

THE COURT: After that you want to be able to go to Florida?

THE DEFENDANT: I want to be able to travel like I have been traveling up to now.

MR. WOHL: I think the bail limits up to now, your Honor, have been the Continental limits of the United States and the Government would have no objection to continuing that.

THE COURT: All right.

THE DEFENDANT: I appreciate that, your Honor.

(Adjourned at 6 o'clock p.m.)

MINUTES OF SENTENCING, DATED MARCH 28, 1975 gwlk 1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 UNITED STATES OF AMERICA, : 5 -against-6 74 Cr. 573 7 SIDNEY STEIN and PHILIP KAYE, 8 Defendants. 9 10 March 28, 1975 BEFORE: 11:30 a.m. 11 HONORABLE CONSTANCE BALLR MOTLEY, 12 DISTRICT JUDGE 13 14 APPEARANCES: 15 Paul J. Curran, Esq. United States Attorney for the 16 Southern District of New York Frank Wohl, Esq., Assistant United States Attorney. 17 Leonard Glass, Esq. 18 Attorney for Defendant Sidney Stain. 19 Charles Stillman, Esq. 20 Attorney for Defendant Philip Kare 21 22 23

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THE COURT: Good morning, gentlemen.

(Case called.)

MR. WOHL: Government is ready.

MR. GLASS: Defendant Stein is ready.

MR. STILLMAN: Defendant Kaye is ready, your

Honor.

(Pause.)

THE COURT: All right.

Mr. Glass, at this time the Court will give you an opportunity to say anything you wish on behalf of the defendant Sidney Stein, after which the Court will address the defendant separately.

MR. GLASS: Thank you, your Honor.

Your Honor has already had the opportunity to review the presentence report submitted by the Probation Department. Your Honor has had the opportunity to review the memorandum submitted by the government, to which were an attached five exhibits from interested agencies of the government. Your Honor has also had an o ortunity to observe Mr. Stein during the course of the lengthy trial which just terminated and which he was one of the principal government witnesses.

As your Honor is aware, Mr. Stein has a prior criminal record. He was sentenced to two years in jail by gwlk

another judge of this court. That sentence was reduced to time served. During the 90 days that he did serve time, he was in solitary confinement because of his position as an individual cooperating with various branches of the government

I believe that your Honor is also aware of the fact that when Mr. Stein's sentence was reduced, he was placed upon five years probation, two of which years have already passed. During that period, according to the government and according to my best sources, Mr. Stein has conducted himself in a manner which is a credit to himself and his community.

I respectfully suggest that no useful purpose would be served at this time by imposing a jail sentence on Mr.

Stein. I believe that his benefit to himself, his family and more important to the community in terms of his continued cooperation and assistance with various agencies of the United States government, including this United States

Attorney's office, far outweighs any remedial sanctions that might result from his further incarceration.

I don't feel, your Honor, that at this time there is anything further that I could add to the voluminous material that is before your Honor from objective disinterested persons and also by virtue of your Honor's own observations of Mr.

Stein during the course of the Stern-Haskell trial.

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Thank you.

THE COURT: Does the government have anything to say?

MR. WOHL: The government has nothing further to say, your Honor, other than what we have submitted in the presentence sentencing memorandum, unless your Honor has any questions at all to ask of the government.

I think we have attempted to cover it as well as possible in the memorandum that we have submitted to the Court.

THE COURT: In the case before Judge Bryan when the defendant Stein was sentenced to two years, was that a trial or a plea?

MR. WOHL: That was after trial, your Honor.

MR. GLASS: No, your Honor -- I thought you meant Brieant. Excuse me, your Honor.

You mean the securities fraud case?

THE COURT: Yes.

MR. GLASS: That was a trial.

THE COURT: Then Mr. Stein has a conviction for parjury in the Radio Hill case; is that it?

MR. GLASS: That is correct, your Honor.

THE COURT: That was during the course of a civil proceeding; is that it?

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MR. WOHL: We . The perjury occurred when he testified as a witness in the civil trial brought by the SEC in the Radio Hill Mines securities fraud.

THE COURT: And that was a plea; is that it?

MR. WOHL: It was a guilty plea to three courts of perjury, your Honor. That is correct.

THE COURT: Are there any indictments presently pending against Mr. Stein?

MR. WOHL: No, your Honor, there are not.

THE COURT: We will take a brief recess.

(Recess.)

THE COURT: All right, Mr. Stein.

DEFENDANT STEIN: Yes, your Honor.

THE COURT: You are now before the Court for sentence having been convicted on your pleas of guilty to count one, count seven and count fourteen of indictment 74 Criminal 573.

Now, in count one you were charged with violating the federal conspiracy statute, which provides for a term of imprisonment up to five years and or a fine up to \$10,000.

with a violation of Title 15 United States Code, Section 76J; which provides for a term of imprisonment up to two years and or a rine up to \$10,000.

With respect to count fourteen, you were charged with a violation of Title 15 United States Code,
Section 77E.

For this offense the law provides a term of imprisonment up to five years and or a fine up to \$5,000.

Do you wish to make a statement in your own behalf at this time or to say anything as to why these maximum penalties provided by the Congress should not be imposed in your case?

DEFENDANT STEIN: Yes, your Honor.

THE COURT: All right.

and I experienced it and it's been a horrible experience and since then I have been rehabilitated, rehabilitating myself.

I will continue to cooperate in any way, anywhere, anyplace, as I have been doing, and I want to make a new place for myself in society. I would like to become a recognized citizen one more time. I hope you will give me the opportunity to do that.

THE COURT: Of course, Mr. Stein, you testified for the government in this case against other defendants and, as you know, during the course of that trial the nature and extent of your participation in the crimes alleged was developed as a result of your direct examination and the cross-

examination by various defense counsel.

During the course of that trial there was testimony
to examination of you which showed the nature and extent of
your cooperation with the government in this case and in
many other cases. So that the Court is fully apprised at
this time of your involvement in this instant indictment and
the underlying facts with regard to counts one, seven and
fourteen which you have pled guilty.

In addition, as your lawyer and the government have already pointed out, you have been previously convicted in this court of a securities law violation; is that right?

DEFENDANT STEIN: Yes, your Honor.

THE COURT: And you have also been previously convicted in this court -- was it three counts of perjury or
one?

DEFENDANT STEIN: Yes, your Honor.

THE COURT: Three?

DEFENDANT STEIN: I'm not sure. I pled guilty.

THE COURT: Do you know, Mr. Wohl?

MR. WOHL: Yes, your Honor. I reviewed the docket sheet. Our records in our clerk's office show three counts, Mr. Stein pleaded guilty to three counts, your Honor.

THE COURT: When you appeared before Judge Bryan in 1971, I gather -- it may have been as late as January 30,

1973 -- a presentence report was prepared in this case which reflected the views of the probation officer at that time.

Now, as your lawyer brought out, at that time your cooperation with the government was not as extensive as it has been since that time, but apparently what was not brought out that time was the nature and extent of your involvement in the instant case and, of course, in many other cases.

DEFENDANT STEIN: May I say something, your Honor?

I'm sorry.

emerged was a picture of you, Mr. Stein, which has been previously described, as I have said, by the probation officer. Because I concur in his views which were made even then, before he had a more extensive picture than we all have at this time, I am going to read that to you because I concur in that view after having sat through the trial of this case which, as you know, lasted I believe it was eight weeks. It may have been longer.

Now, at that time the probation officer's evaluation was the following:

"Stein has developed a rightly earned reputation among the Securities and Exchange Commission as one of the major manipulators of stocks. Wis method of operation is simply to acquire shell companies for which he gets a

percentage, obtains underwritings for them and then creates an artificial market. When the price is right, Stein 'dumps' his stock causing havor for the other investors, some small and big. He operates under the guise of respectability reinforced by his prevasive and glib personality which makes him formidable opposition. There appears little doubt that Stein is one of the major offenders in this field. There is a history and pattern of this behavior with three cases, including one for forgery about to break open in this court, all leading to considerable prosecution.

"In all cases it appears that Stein emerges as the principal and the one who dominates and controls every and all situations. Since the filing of the indictment on the instant offense in 1966 Stein has been quite active.

"Another indictment was filed in 1968 (dismissed) and two injunctions were issued with respect to Stein's violations of securities laws in 1970. Although outwardly courteous and cooperative during the investigation Stein, in our opinion, was completely vague and guarded, especially concerning his finances and current business. Stein, a complex man, operates in a complex field and commits complex offenses. Not only a 'merger and acquisition man', which in itself can be legitimate, Stein is one-third

9"

owner of a hotel and restaurant in Miami Beach, Florida.

"Despite these surface qualities of respectability."

Stein's several indictments and injunctions, both past and present, tend to cast certain sinister implications about his overall activities, including his name being mentioned in three cases with men reputed to be on the organized crime list.

"In any event, it certainly appears the. Stein has learned little about himself in the process and will continue to act in a fraudulent and manipulative manner. He shows no remorse for his involvement and indicates that he is innocent not only of the instant offense but of other offenses

"Stein deserves no consideration despite his socalled cooperation in other cases. In each case it appears Stein was acting in his own self-preservation and that he could not himself be criminally prosecuted.

"In our opinion, whatever has been uncovered by
Stein until now is but the periphery of his true activities
and manipulations. Stein despite three unsolicited letters
attesting to his character (attached) is not a deserving
candidate for probation.

"Stein is one of the better known man in this field, not only to government agencies and counts, but among Wall Street brokers, dealers, attorneys, etc." ra.

"A commitment and fine in this case is recommended on Stein's activities alone. Additionally, a commitment hopefully will forewarn others that this type of offense could result in serious consequences."

Now, as I have indicated, Mr. Stein, after reviewing that prior presentence report and the brief one I have received updating it with respect to the instant case, and after varing the testimony on this trial, I concur with the views of the probation officer, and that is that despite the fact that you have given extensive cooperation to various federal agencies, a crime like this in view of your record in the nature and extent of your involvement in this case should not escape punishment, primarily as a warning to others that this kind of activity will not be tolerated.

During the course of the trial there was also testimony about your activities following the sentence imposed by Judge Bryan which related to attempted suicide on your part and attempts apparently to get a sentence fixed which, of course, comes after your involvement in this case.

The testimony which I heard leads me to the conclusion that what you attempted in 1972, whenever that was, was an attempt to avoid going to jail by feigning suicide.

Now, the long and short of this is to say, Mr. Stein, that I think that the activities in which you have

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engaged, as demonstrated by the testimony in this case, are matters of serious consequence; that is manipulation in the stock market, transportation of unregistered stock and conspiracy to violate the federal securities laws. I don't consider those minor crimes or crimes which deserve a slap on the wrist.

Moreover, it appears that as a result of your activities in this case, at least a quarter of a million dollars, if not more, was taken from unsuspecting investors and, needless to say, lost by them.

So that as I have indicated, I consider these crimes to which you have pled guilty very serious matters, and the nature and extent of your involvement in them as demonstrated on the trial is such as to warrant a substantial prison term.

The government has already permitted you to plead to three out of at least nineteen counts -- I gather you were named in; is that right?

DEFENDANT STEIN: Yes, your Honor.

THE COURT: You were named in eighteen counts.

I gather -- in exchange for your testimony on this trial.

And so it's my conclusion that leniency has -- ready be extended to you previously with respect to this case.

It is the judgment of the Court that with respect

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years and a fine of \$10,000.

With respect to count two, the defendant is sentenced to a term of two years and a fine of \$10,000, to be served concurrently with the sentence imposed on count one.

With respect to count fourteen, it is the judgment; of the Court that the sentence be five years and a fine of \$5,000 to follow the sentence of counts one and seven.

Those are committed fines totaling \$25,000 and the total sentence is ten years.

Is there a motion with respect to the open counts?

those counts, your Honor.

MR. GLASS: Your Honor --

THE COURT: The motion is granted.

MR. GLASS: -- may I be heard for a noment?

THE COURT: No. The defendant is .emanded.

MR. GLASS: May we not have some time for him to conclude his business affairs before he is remembed, your Honor?

THE COURT: No. We are not going to have anymore attempted suicides or anything else with Mr. Stein. We have been through that.

DEFENDANT STEIN: May I say something, your Honor?

THE COURT: The defendant is remanded.

UNITED STATES OF AMERICA,

74 CR. 573

Plaintiff,

JUDGMENT

-against-

SIDNEY STEIN.

Defendant.

-----х

Plea---Guilty

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did use and cause to be used means and instrumentalities of interstate commerce and the mails in furtherance of scheme to defraud. (T.15, Secs. 78j & 78ff USC; T. 18, Sec. 2 USC); directly and indirectly caused to be carried by means and instruments of transportation in interstate commerce, for the purpose of sale and delivery after sale of common to such securities was in effect with S.E.C. (T. 15, Secs. 77e & 77x USC., T. 18, Sec. 2 USC,); and conspiracy so to do. (Title 17, Section 371 U.S. Code.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on count 1 and fined \$10,000.

Two (2) years on count 7 and fined \$10,000. Prison sentence on counts 1 and 7 to run concurrently with each other.

Five (5) years on count 14 and fined \$5,000. Prison sentence on count 14 to run consecutively with sentence imposed on count 1.

Total fines of \$25,000.to be paid or defendant is to stand committed until the fines are paid or he is otherwise discharged according to law.

Counts 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 17 and 18 are dismissed on motion of defendant's counsel with the consent of the Government.

DOCKETED AS JUDGMENT #75,272 ON April 1, 1975 /s/ CONSTANCE BAKER MOTLEY March 28, 1975 CASE NUMBER: 74 CR 573

UNITED	STATES	OF	AMERICA)	
-v-)	MOTION FOR MITIGATION
SIDNEY	STEIN)	
)	

COMES NOW the Defendant SIDNEY STEIN, by and through his undersigned counsel and moves this Honorable Court to mitigate the sentence previously imposed, and as grounds therefor would show:

- 1. On June 4, 1974, a grand jury sitting in the Southern District of New York returned an Indictment against the Defendant SIDNE? STEIN, and nine other individuals, charging various violations of the Securities and Postal Laws of the United States. Thereafter, on January 9, 1975, the Defendant entered pleas of guilty to Counts I, VII and XIV of the said Indictment.
- 2. On March 28, 1975, the Defendant was sentenced by this Honorable Court to a term of five (5) years, and a fine of Ten Thousand (\$10,000) Dollars on Count I. With respect to Count II, the Defendant was sentenced to a term of two (2) years, and a fine of Ten Thousand (\$10,000) Dollars to be served concurrently with the sentence imposed on Count I. With respect to Count XIV, the Defendant was sentenced by this Honorable Court to a term of imprisonment of five (5) years and a fine of Five Thousand (\$5,000) Dollars, to run consecutively with the sentences on Counts I and VII. Thus, the Defendant was sentenced to a total term of incarceration of ten (10) years, and a total fine of Twenty-Five Thousand (\$25,000) Dollars. This Motion for Mitigation is therefore timely filed pursuant to Rule 35, Federal Rules of Criminal Procedure.
- 3. The Defendant respectfully requests this Honorable Court to mitigate his sentence for the reasons more fully described in the attached Memorandum of Fact in Support of this Motion.

WHEREFORE, the Defendant SIDNEY STEIN by and through his undersigned counsel moves this Honorable Court to mitigate the sentence previously imposed in this cause.

Respectfully submitted,

BIERMAN, SONNETT, BEILEY & OSMAN, P.A Attorneys for Defendant STEIN 28 West Flagler Street, Suite 600 Miami, Florida 33130

NEAL R. SONNET'T

CASE NUMBER: 74 CR 573

UNITED	STATES	OF	AMERICA)	
					MEMORANDUM OF FACT IN SUPPORT
-v-)	OF MOTION FOR MITIGATION OF SENTENCE
SIDNEY	STEIN)	SENTENCE
)	

When the Defendant SIDNEY STEIN appeared before this Honorable Court on March 28, 1975 for sentencing, counsel who appeared with him, Leonard Glass, Esquire, noted that this Honorable Court had had the opportunity to observe Mr. Stein during the course of the trial, and had also had the opportunity to review both a pre-sentence investigation and a sentencing memorandum submitted by the Government. In the preparation of this Memorandum of Fact in Support of the Defendant's Motion for Mitigation of Sentence, undersigned counsel has had the opportunity to review a transcript of the Defendant's testimony at trial, to review the Government's sentencing memorandum, and to review the transcript of the sentence proceedings of March 28, 1975. This memorandum is submitted because we respectfully suggest that certain salient facts may not have been brought to the attention of this Honorable Court or, in the alternative, were brought to the attention of this Honorable Court in such a way as to be inaccurate and thus inure to the detriment of the Defendant. This memorandum is submitted, then, in an effort to clarify the Defendant's background in certain important areas.

I

THE DEFENDANT'S PRIOR COOPERATION

We respectfully suggest that this Honorable Court may not have been apprised of several important factors with regard to the cooperation rendered by the Defendant Stein to agencies of the United States Government. This belief is grounded upon two major reasons. First, in reviewing the Government's sentencing memorandum, we note the Government's statement that Stein's cooperation had been offered "since 1972 when his petition for certiorari on his first conviction, 66 CR 732, was denied". (See Government's Sentencing Memorandum, page 4).

Second, at the sentencing proceedings of March 28, 1975, this Honorable Court read from, and indicated agreement with, a pre-sentence investigation prepared prior to the Defendant's sentence in the above mentioned case, on September 16, 1971. In that pre-sentence report, the probation officer indicated that "Stein deserves no consideration despite his so-called cooperation in other cases. In each case it appears Stein was acting in his own self-preservation that he could not himself be criminally prosecuted."

We respectfully point out to this Honorable Court that both the statement made in the Government's sentencing memorandum and the statement made in the original pre-sentence investigation are misleading and fail to relate to this Honorable Court extensive cooperation offered by the Defendant even prior to his first prosecution.

Stein had been cooperating with State authorities in New York City as early as 1965, in an investigation involving one John Lombardozzi, an organized crime figure. In that instance, Stein was not a target of any investigation nor was he criminally involved in any illegal activities, but was merely a cooperating witness with no necessity for "self-preservation".

At approximately the same time, Stein was cooperating with the United States Attorney's Office for the Southern District of Florida in a major case involving misapplication of funds at the Five Points National Bank in Miami, Florida. Again, in that case, Stein was never a target of the investigation and was engaged in no illegal activities in that case which would have made him a potential defendant, acting out of "self-preservation". An affidavit executed by former Assistant United States Attorney Michael J. Osman is attached to and made a part of this memorandum as Exhibit 1. That Affidavit clearly indicates that the Defendant Stein was a willing and cooperative witness for well over a year prior to the return of the indictment in that case in July of 1966. Moreover, as Mr. Osman's Affidavit points out, Stein never attempted to gain any advantage through his cooperation and testimony and never attempted to use his cooperation in the Florida case as a lever to aid or assist him in any other pending investigations.

In complete candor, it must be noted that, coincidentally, Mr. Osman is now a member of undersigned counsel's law firm. For that reason we intend to submit to this Honorable Court supplementary affidavits from another Assistant United States Attorney who was co-counsel for the Government on the case, and the special agent of the Federal Bureau of Investigation who was the case agent. Unfortunately, as of the time of the filing of this memorandum, both of those individuals were unavailable. We suggest to this Honorable Court, however, that Mr. Osman's outstanding career as an Assistant United States Attorney, as Chief of the Criminal Division for the United States Attorney's Office, as acting United States Attorney, as United States Magistrate for the Southern District of Florida between 1970 and 1975 and as an officer of this Court, lends full credibility to the substance of his affidavit, notwithstanding his present association with undersigned counsel's law firm.

The critical importance of Stein's cooperation in the two above mentioned situations can be seen when his cooperation in those instances is viewed against the chronological history of his first conviction. As noted above, Stein began cooperating with State prosecutors in New York and with Federal prosecutors in Miami in the early part of 1965. This was well prior to the return of the indictment against him in case number 66 CR 732, on September 22, 1966. In fact, his cooperation began even before his case was referred by the S.E.C. to the United States Attorney's Office for prosecution on October 19, 1965.

Even more important, since the acts which Stein was alleged to have committed in 66 CR 732 took place in the Spring of 1960, through October of 1961, Stein had no reason to believe and, in fact did not believe, that the case would ever result in criminal charges. It is manifestly clear, then, that Stein began cooperating with governmental agencies at a time when he had no reason to believe he was facing any criminal liability himself. This is in direct contrast to the pre-sentence investigation relied upon by this Honorable Court which insinuated that Stein only cooperated out of "self-preservation", and in further contrast, to the mistaken representation of the Government's sentencing memorandum that Stein did not begin to cooperate until his petition for certiorari was denied in 66 CR 732.

When the indictment in that case was finally returned on September 2, 1966, Stein believed that he had a valid legal defense and set about to defend the charges that had been returned against him. His belief in the validity of his defense is given some credence by the fact that, when the case finally came to trial on May 5, 1971, four years and eight months after the return of the indictment, all but eight of the original seventy-two counts were dismissed or withdrawn by the time the case was submitted to

the jiry. Moreover, of the eight counts against Stein which were submitted for the jury's consideration, Stein was acquitted on six of those counts.

Because of Stein and his counsel's strong belief in the validity of their defense, there was never any attempt to make a "deal" with the Government, or to offer information or cooperation in other matters in hopes of receiving lenient treatment in his own case. At all times Stein asserted his right to trial and continued to believe that he would ultimately be acquitted of all charges. Nevertheless, in the intervening years between the return of the indictment against him and the 1971 trial, Stein testified for the Government in the Southern District of New York in an important case, and his testimony significantly contributed to a conviction in that case.

Although Stein was convicted on May 27, 1971, and thereafter sentenced on September 16, 1971, to a term of imprisonment for two years, he and his counsel continued to believe that his case would ultimately be reversed on appeal, and he fully exercised his right to that appeal. In the meantime, however, he still continued to cooperate with Federal authorities, and testified as a witness at two separate trials held in the Southern District of New York in 1971 and early 1972.

Thus, when Stein's petition for certiorari was denied in July of 1972, he had, in point of fact, been cooperating with agencies of the United States Government and with the United States Attorney's Office in the Southern District of New York and in the Southern District of Florida, Miami Division, for at least seven years. And as the facts also clearly show, Stein was not acting "in each case" as alleged in the original pre-sentence investigation "in his own self-preservation".

The real demonstration of that fact, however, was not fully crystalized until October, 1972. For several months prior

to that time, Stein had been working with the Bureau of Narcotics and Dangerous Drugs (now the Drug Enforcement Administration) on a sensitive case involving narcotics trafficking by a California attorney who had reputed contacts with organized rime. It should be emphasized here that Stein was never in any way criminally involved with the said attorney or the trafficking of narcotics, but merely reported to the BNDD information that he had gleaned as a result of a chance meeting.

Although there was substantial personal danger to Stein, he agreed, at the request of BNDD agents, to continue working with them in their investigation. In fact, those agents originally requested that Stein's surrender be postponed so he could continue his undercover efforts.

It was entirely as a result of Stein's willingness to come forward with the information he had learned, and to act in an undercover canacity that agents of the Burea of Narcotics and Dangerous Drugs were able to effect arrests leading to the prosecution in this District the case of United States of America versus Perry Walshin. An indictment had been returned and the defendants were awaiting trial at the time Stein was ordered to surrender to begin the service of his sentence on November 13, 1972.

On October 10, 1972, Stein's counsel filed a motion for mitigation of sentence before the Honorable Frederick vanPelt Bryan who had been the presiding judge at Stein's trial. At the hearing on the motion for mitigation, Stein's extensive cooperation was brought to the attention of the trial court by his counsel, Assistant United States Attorney John Wing, and by way of a sealed letter from theBureau of Narcotics and Dangerous Drugs. Unfortunately, Assistant United States Attorney Wing incorrectly alleged that Stein's cooperation had not begun until his petition for certiorari was denied, and his statement went uncorrected by Stein and his counsel.

After hearing arguments from both sides, Judge Bryan denied the motion for mitigation in all respects and ordered Stein to surrender as scheduled, three days later.

At that point, the true test of the man came into full focus. For, had Stein been cooperating with the Bureau of Narcotics and Dangerous Drugs merely in an attempt to gain leniency from the trial judge, it would stand to reason that Stein would withdraw his cooperation after the trial judge denied his motion for mitigation, and it was obvious that he would have to serve his full sentence.

Agent Richard Keckler of the Bureau of Narcotics and Dangerous
Drugs, Stein was requested to, and agreed to act in an undercover
capacity in a separate case on October 11, 1972, the day following
the denial of his motion for mitigation, and just two days before
he was scheduled to begin the service of his sentence. While
Special Agent Keckler personally related to undersigned counsel
that their agency was not able to complete the October 11th
transaction for administrative reasons, he also related how genuinely
impressed he was that Stein was still willing to cooperate with
the BNDD even though his attempts to have his sentence reduced had
been rejected by the trial judge.

Nor did Stein become embittered and uncooperative after he was taken into custody. During the period of his incarceration he was returned from the Federal Correctional Institution at Springfield to testify in the Southern District of New York at the Walshin trial. His testimony was central to the Government's case, and materially assisted in the verdict of guilty that was returned following trial.

It should be noted, as was pointed out in AUSA Feffer's statement to Judge Bryan at the hearing on January 30, 1973, that because of Walshin's organized crime connections, Stein was held

in solitur, confinement during his incarceration, and, when he was returned to New York to testify at the Walshin trial, was in special protective custody of United States Marshals, because of the potential danger to his personal safety.

Because of Stein's extensive prior cooperation, and because of the precarious mental health revealed by the Springfield study performed pursuant to Title 18, United States Code, \$4208(b), Judge Bryan agreed to reduce Stein's sentence at the January 30, 1973 hearing. The following, from page 20 of the transcript of that hearing, is extremely instructive with regard to Stein's continuing and extensive cooperation after that date:

THE COURT: As I say, I have given you a terrific break here. I will say to you, among other things though, I am not making it a condition of probation, an express condition of probation, your continued cooperation with law enforcement authorities is one of the factors I am taking into account.

DEFENDANT STEIN: I will keep my word about that.

And keep his word he did. As the Government's sentencing memorandum, together with the five attached exhibits clearly indicates, Stein continued to cooperate with any and all agencies that requested his assistance.

Moreover, the quality of his cooperation must be viewed in the light of how it was offered, and what it personally involved in terms of perso al risk. For Stein was not only offering information which he possessed concerning illegal activities, he allowed himself to be utilized as an unofficial undercover agent in entirely new and strange situations.

For example, Exhibit #3 of the Government's sentencing memora dum, the FBI letter of March 6, 1975, details several instances where, at the request of that agency, Stein posed as a buyer of stolen securities, or participated in an undercover capacity in loansharking investigations.

These were instances in which information had been developed independently of Stein, but in which a "new face" was needed these instances, Stein could have declined to become involved, due to the potential danger. But he was keeping his promise to Judge Bryan, and demonstrating his sincerity when he stated at the January 30, 1973 hearing:

DEFENDANT STEIN: Yes, your Honor, because I have learned my lesson. I am never going to do anything wrong again. I will help the agencies any way

I know how and get myself well and help my wife.

Because of the details concerning specific instances of cooperation after Stein's release from incarceration on January 30, 1973, we shall not, in this memorandum, repeat them.

What deserves emphasis here, however, is that Stein's cooperation was given freely and voluntarily at a time when he had little or no reason to suspect that he might later become a defendant in the instant case.

And, when Stein first learned, in March, 1974, that the SEC had referred the Stern-Haskell matter to the United States Attorney for criminal prosecution, and that he was likely to be named as a defendant, Stein agreed with the Government, through undersigned counsel, that he would assist the Government in the preparation of its case, would plead guilty, and would testify as a prosecution witness at the time of trial.

Thus, Stein still continued to cooperate with the Government, prior to the return of the indictment on June 4, 1974, and through the trial of the case this year, even though there was a substantial threat that he might be incarcerated.

Certainly it is true that he hoped this Honorable Court would take his cooperation into consideration in passing sentence, and that the extensive nature of his cooperation might result in a lenient sentence of probation or short-term incarceration. It would be naive to discount that factor in the cooperation given by any defendant or potential defendant, and we strongly suggest that, but for that factor, cooperation by persons engaged in

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criminal activities would not be forthcoming, and would greatly hamper the Government's ability to successfully prosecute many cases.

But it is palpably patent that much of the cooperation given by Stein between 1965 and 1975 was not grounded upon a desire to avoid prosecution or incarceration, and that some of his most significant cooperation was offered in an attempt to make reparations for his past conduct.

Again, that fact is brought into sharper focus by the attitude and actions of Stein following the sentence imposed by this Honorable Court on March 28, 1975.

This Court passed sentence despite Stein's cooperation, because of its feelings concerning his prior illegal activities.

As the Court stated at the time of sentencing:

Now, as I have indicated, Mr. Stein, after reviewing that prior presentence report and the brief one I have received updating it with respect to the instant case, and after hearing the testimony on this trial, I concur with the views of the probation officer, and that is that despite the fact that you have given extensive cooperation to various federal agencies, a crime like this in view of your record in the nature and extent of your involvement in this case sould not escape punishment, primarily as a warning to others that this kind of activity will not be tolerated. (Transcript of March 28, 1975, p. 11) (emphasis ours).

It was clear, then, that Stein's cooperation, if it had actually been given only to avoid lengthy incarceration, had been to no avail, and that this Honorable Court, while giving it consideration, had not been persuaded by it in determining sentence.

Here again, it could reasonably be expected that Stein, having received a ten-year prison term, and immediately remanded, would become embittered and discontinue his cooperation.

But Stein has continued to cooperate with Federal agencies since he was sentenced and remanded, and his cooperation continues to be significant and important to law enforcement.

Because of the active and current nature of that cooperation, we cannot go into details in this Memorandum, but we will be prepared to present appropriate evidence to this Honorable Court at the time of a hearing on this motion, if granted, for in camera inspection.

One further point should be made in this section of our Memorandum. At the time of sentencing, this Honorable Court made reference to "attempts apparently to get a sentence fixed" during the proceedings before Judge Bryan. (See transcript of March 28, 1975, p. 11). We believe this Honorable Court may have been under the mistaken impression that these events were indicative of the Defendant's further unlawful activities, and so we believe some clarification is necessary.

In point of fact, Stein was approached by certain individuals prior to the first Motion For Mitigation held before

Judge Bryan on October 10, 1972. Stein was told that for a sum of money, his mentence could be fixed. Stein not only did not attempt to fix his sentence, but he reported the solicitation to the FBI, and agreed to cooperate with them in their investigation. His cooperation led to the return of an indictment, and, at the further hearing on January 30, 1973, AUSA Jerry Feffer made the following representations to Judge Bryan (Transcript of January 30, 1973, p. 15-16, 17):

Last summer this office and the Federal Bureau of Investigation were investigating a matter involving potential influence peddling. Mr. Stein, for a period of approximately three to four weeks, wholly cooperated in this effort. In this regard he had a number of telephone conversations, a number of meetings, he made several trips to Washington, D.C., all in furtherance of this investigation; in essence, his cooperation was most helpful and meaningful. An indictment was returned just a few days ago naming two attorneys from Washington, D.C., another resident of Washington, D.C., and a proprietor of a printing business in Florida

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view the Defendant's prior offenses in the perspective of when they occurred, as an indicator of whether the Defendant has made an effort to rehabilitate himself, and whether that effort has been successful.

Stein's activities which led to his first conviction took place in 1960 and 1961, although, since the indictment was not returned until 1966, this fact is often overlooked.

Again, as this Honorable Court is aware, Stein's activities in the case at bar took place in 1968 and 1969, even though the indictment was not returned until June 4, 1974.

Likewise, the events which resulted in two other indictments returned against Stein and later dismissed, dated back to the middle 1960's.

Manifestly, the latest date which resulted in the return of any criminal charges against Stein occurred on October 6, 1970, when Stein was charged with perjury resulting from testimony at a civil SEC hearing, and to which Stein pleaded guilty and was placed on probation.

Thus, we suggest that there has been a demonstrated, marked change in the conduct of this Defendant which goes back at least to his conviction in the Buckeye case. And we suggest that this fact demonstrates that Stein had attempted to, and been successful at, self-rehabilitation well prior to the return of the instant indictment last year, and the imposition of his current sentence.

In that light, we appreciate the candor of the Government in its sentencing memorandum, and agree with its statement that there has been no reliable information that Stein has committed any crimes since 1972.

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Of course with respect to the Quase indictment, the second influence peddling indictment, that indictment charges them with attempting to defraud Mr. Stein of money to fix this case and, of course, his cooperation was complete with regard to that.

Thus, contrary to the impression which may have been left with this Honorable Court, the Quase case was not a situation in which Stein was attempting to "fix a sentence" or engage in further unlawful activity, but, rather, a situation in which he properly reported information concerning an unlawful solicitation, and then agreed to act as an undercover informant so that those responsible for the alleged "influence-peddling" could be properly brought to justice.

We recognize the attitude of this Honorable Court at the time of sentencing that cooperation alone should not allow guilty persons to avoid punishment for the transgressions they commit. But we respectfully ask this Honorable Court to review the Defendant's cooperation in light of the length of time it has been offered, and the attitude in which it has been given. We suggest that the Court may not have been aware of the full scope of Mr. Stein's cooperation. We do not suggest that he is entitled to a "free ride" of immunity from imprisonment therefor, but we hope that, taken as part of the other arguments which will be advanced, this Court will give it proper weight and consideration, in deciding whether some mitigation of his sentence is appropriate.

II

THE DEFENDANT'S REHABILITATION

We make no effort to excuse or justify the Defendant's activities between 1960 and 1970. The evidence of his participation in fraudulent activities regarding securities was amply developed during his testimony at trial, both on direct examination and on cross-examination. Nor do we quarrel with the statement made in the Government's sentencing memorandum that Stein was considered, during those years, to be a "major securities offender" and that he was involved in at least 20 security frauds.

We do believe it is important, however, for this Court to

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We believe this is an important consideration for this Honorable Court in deciding the instant motion, since one of the important considerations in determining sentence is the possibility of rehabilitation of the Defendant. In this case, this Honorable Court is confronted with a Defendant who ceased his criminal activities almost five years before his sentencing, and who has, during that period of time, not only led a law-abiding existence, but has made a positive contribution to the administration of justice by continuing to cooperate with the authorities.

Even more significant, the Defendant's attempts to rehabilitate himself were taken into consideration by Judge Bryan in mitigating his original sentence.

Judge Bryan was aware of the fact that Stein had been extensively engaged in securities violations. For one thing, he had the benefit of the original pre-sentence investigation, which was prepared for him, and which the Honorable Court relied upon in sentencing Stein on March 28th. In addition, AUSA John Wing advised Judge Bryan at the first hearing before him that Stein was still the subject of investigation on other matters.

Of course, when Judge Bryan mitigated Stein's sentence on January 30, 1973, Stein had not had as extensive and lengthy an opportunity to demonstrate his rehabilitation as he does now. Since that time, he has been successfully meeting his obligations as a probationer, and, except for a complaint lodged against him for assault, on which he was adjudged Not Guilty, he has been a model probationer and citizen. Moreover, he has totally justified the confidence expressed by Judge Bryan that he would continue his cooperation with law enforcement authorities.

We know that this Honorable Court recognizes that the offenses for which Stein is now incarcerated pre-date by at least three years the mitigation of sentence granted to him in the Buckeye case. While this fact does not lessen the seriousness of those offenses at the time they occurred, we believe the passage of time since then, and the good conduct of the Defendant since then, are significant factors that should, and we hope, will be

considered by the Court, and which will result in appropriate mitigation of the penalty imposed.

III

THE DEFENDANT'S PSYCHIATRIC BACKGROUND

Perhaps the most serious mis-impression left with this
Honorable Court at the conclusion of the instant case was the
reports o. an alleged attempted suicide by the Defendant shortly
before he was scheduled to surrender to begin serving his sentence
on the 1971 conviction. At trial, various counsel for the other
defendants, and Rubinson, who defended himself, strenuously argued
that Stein had faked the suicide attempt, and would have done or
said anything to avoid going to prison. The following passage
from the transcript of trial is typical in that regard (transcript
of trial, p. 3709):

MR. RUBINSON: But that's not the truth. He led me into that. He was there because I took him to the psychiatrist and that's why they put him in isolation, not because of a threat.

I am trying to discredit this witness by if he answers that then I am going to say about the psychiatrist and how that happened, and why he got into isolation.

This man is a liar, and I am going to prove it.

THE COURT: Just a minute. He discussed with you how he was going to say to the Government that he was threatened so they could put him in protective custody?

MR. RUBINSON: No. I took him to the psychiatrist, I got him into the hospital, I got him into Springfield.

I was there.

THE COURT: So you know that he was feigning.

Is that what you are saying?

MR. RUBINSON: Yes.

Those bald assertions, along with others made during the course of the trial, which led this Honorable Court to state at the time of sentencing that Stein had engaged in "an attempt to avoid going to jail by feigning suicide" (transcript of March 28, 1975, p. 11), were not only bald assertions, they were vicious and untrue, and a conscious attempt to mislead the jury and this Court.

In point of fact, Stein has a long history of emotional and psychiatric illness. According to his medical history, he was first hospitalized as early as 1951 for severe depressive symptomatology. Again, in 1964, he was hospitalized for severe depression and received shock therapy. Since that time, he had experienced various depressive episodes.

It is, of course, absurd to assume that Stein had begun in 1951 to set up a phony psychiatric history, or that he had that in mind in 1964, two years prior to the return of the Buckeye indictment.

On the contrary, his long history of emotional disturbance lends credence to the validity of his suicide attempt, and clearly shows the pattern of deterioration that set in as he approached the potential of incarceration.

When his Petition for Certiorari was denied on July 12, 1972, and it appeared that incarceration was inevitable, the underlying disturbance deepened, and he was forced to seek the assistance of Dr. William A. Leone on July 16, 1972 "as an emergency". Dr. Leone's report, dated July 18, 1972, is attached to and made a pert of this Memorandum as Exhibit 2.

Thereafter, Dr. Leone referred Stein to Dr. Norman Reichenberg for psychological testing, and that report confirmed Dr. Leone's original findings. The report of Dr. Reichenberg is attached to and made a part of this Memorandum as Exhibit 3.

However, although Stein was urged to bring his medical

Motion For Mitigation, he refused to do so, because he was embarrased to have his emotional disturbance made public.

After his Motion was denied, and he was ordered to surrender, his deterioration progressed. In addition, he had been working in an undercover capacity with the BNDD, and on October 12, 1972, only hours prior to the flight to Miami on which he consumed the pills, his life was threatened. An agent of the BNDD personally confirmed to undersigned counsel and to Leonard Glass, Esq., that he had overheard one such threat.

It was in the backdrop of the above facts that Stein, overwhelmed and suffering from a severe depressive episode, made his attempt at suicide, and was admitted to a well-known psychiatric hospital in Miami. The discharge summary of that hospital, the Human Resource Institute, is attached to and made a part of this Memorandum as Exhibit 4.

It is true that the Government's attitude immediately following the suicide attempt was that Stein was feigning suicide to avoid incarceration, and they made their opinion known to Judge Bryan in an affidavit presented at a hearing on October 31, 1972. However, because of Stein's long history of emotional disturbance, and with the agreement of the Government, Stein was committed to the federal institution at Springfield, Missouri for further study.

The Springfield study more than confirmed Stein's severe emotional problems, and his suicidal tendencies. Note, for example, the following passages from the study:

There is professional medical unison suggesting that Stein is but a step away from total personality disintigration and possible psychosis.

0

If he is not immediately subjected to an extended period of psychotherapy and supportive counseling in a structured setting, he could very easily lose contact with reality.

Recent psychological testing and psychiatric observation substantiate that Stein does possess a degree of paranoia which is on the verge of developing into schizophrenic psychosis. His depression is almost at the psychotic level. At this time he is still in contact with reality but the possibility of incarceration poses such a threat to him that he could easily decompensate at any time. The possibility of further suicide attempts is realistic in this case, as it is believed that the recent previous gesture was prompted by the fear of confinement, and incarceration may yet be imminent

At the Medical Center he as been observed as suffering from a very severe affective disorder, as depicted in available reports. As suggested above, total personality disintigration as not occurred, yet he is tenuously close to a total break from reality.

A full copy of the report quoted above has not been attached to this Memorandum, since it was previously introduced into evidence at the trial and is therefore available for the Court's inspection. If requested, however, undersigned counsel will be happy to prothis Court with another courtesy copy.

But the report clearly reveals the seriousness of the Defendant's psychiatric, and indicates overwhelmingly that the suicide attempt which this Honorable Court has previously considered phony was, indeed, a real manifestation of underlying emotional disturbance.

It should be noted that, since Stein's release from incarceration in 1973, he has continued his therapy at the Human Resource Institute in Miami, and has shown signs of improvement. But it cannot be over-emphasized that the threat of a reversal in his condition, and of the eventual "total personality disintigration" forecast by the Springfield medical staff, remains as a real and dangerous threat. A report from his treating Psychiatria Dr. David G. Pinosky, is now being prepared, and will be submitted to the Court in support of our Motion as soon as it is available.

IV

THE HEALTH OF THE DEFENDANT'S WIFE

One of the factors that was taken into consideration by

biopsy revealed that Mrs. Stein had cancer in situ of the vulva, and surgery was indicated. At that time, Mrs. Stein refused to undergo surgery because her husband could not be with her. She continued to refuse treatment until his release, at which time a partial vulvectomy was performed.

Since that time, she has been under constant care and her condition has steadily worsened. Total vulvectomy has now been indicated, and, because of her husband's current incarceration, she has again refused treatment. A letter, dated July 21, 1975, from her attending physician, Joseph Scott, M.D., has been attached to and made a part of this Memorandum as Exhibit 5.

We suggest that the need, physically and emotionally, of Mrs. Stein for her husband's presence during her illness, and to provide her with the love and support she requires for the surgery and treatment ahead of her, is a serious factor which can and should be taken into consideration by this Honorable Court in deciding this Motion. Mrs. Stein is an innocent victim of her husband's conduct, but may very well suffer a more extreme penalty as a result of his incarceration for any extended period of time.

In addition, we must point out that the knowledge that his wife is seriously ill, and that he cannot be at her side, is a strong circumstance which may further deteriorate the Defendant's already tenuous mental health, resulting in a far greater penalty which we believe this Court intended, or which is warranted under all of the circumstances.

V

SUMMARY

We fully agree with this Honorable Court that any sentence should take into account three important considerations -- punishment, rehabilitation, and deterrent effect. With respect to the concept of rehabilitation, we hope this Court will weigh the good conduct of the Defendant for the past four years as an indication that he can be expected to continue such good conduct, particularly under appropriate probation supervision. We hope, too, that the Court will look at the extensive assistance he has given to law enforcement, at extreme risk to his personal safety, as an example of his efforts to make amends for his prior transgressions.

With respect to the concept of punishment, we must observe, as an officer of the Court, that the real risk of a total psychotic break and major mental illness is punishment far too great for the crimes the defendant has committed. Stein's offenses were economic in nature. The fines imposed in this and his prior cases were appropriate and present severe punishment to him.

In addition, the Government is aware of the fact that Stein made restitution in this case in amounts over \$60,000.00, far more than he was alleged to have received for his part in the conspiracy.

Moreover, the Defendant has now been incarcerated for four months, in a special institution because of the security risks involved. Because of the risk to his safety, further imprisonment will have to be either in solitary or isolated confinement, or in a non-federal institution located thousands of miles from his home and family, and under conditions which will certainly be more severe than the usual confinement of a federal prisoner.

For the reasons outlined above and discussed in this Memorandum, we respectfully request that this Honorable Court grant our Motion For Mitigation and mitigate the Defendant's previously imposed sentence.

Respectfully submitted,

BIERMAN, SONNETT, BEILEY & OSMAN, P.A. attorneys for Defendant STEIN 28 West Flagler Street Miami, Florida 33130

NEAL R. SONNETT

AFFIDAVIT

STATE OF FLORIDA)
SE
COUNTY OF DADE)

Before me, the undersigned authority, personally appeared MICHAL J. OSMAN, who having been duly sworn, deposes and states:

- My name is MICHAEL J. OSMAN, and I am an attorney at law, having been admitted to practice in Florida in 1963.
- 2. Between 1963 and 1966, I served as a law clerk to
 Judges David Dyer, Charles B. Fulton, and William O. Mehrtens,
 of the United States District Court for the Southern District of
 Florida. Between 1966 and December, 1970, I was an Assistant
 United States Attorney for the Southern District of Florida, serving
 as Chief of the Criminal Division for that office and as acting
 United States Attorney during December, 1969. In January, 1971,
 I was appointed full-time Magistrate for the Southern District of
 Florida, and served in that capacity until January, 1975.
- 3. During the course of my duties as an Assistant United States Attorney for the Southern District of Florida, I was one of two prosecutors in charge of a case styled United States of America v. Martin D. Von Zamft. That case, more popularly known as the "Five Points Bank Case" involved charges of tensive misapplication of funds and the looting of a National Bank, and is the largest bank fraud case ever tried in the Southern District of Florida, and resulted in the conviction of all defendants.
- 4. The investigat on of the Five Points Bank Case began some time during 1965 and an indictment was returned under case number 66-287-DD, on July 29, 1966. That indictment was subsequently dismissed on legal grounds, as was a subsequent indictment returned on February 23, 1967 under case number 67-98-CF. A third indictment returned on August 16, 1967, under case number 67-363-CR-CF was sustained by the trial court and the case was tried in the Southern

District of Florida between March 6, 1968 and March 27, 1968.

5. I first met Sidney Stein several months prior to the return of the original indictment in the Five Points Bank Case.

Mr. Stein had formerly held a large interest in the Five Points

National Bank and had sold that interest to persons who were ultimately indicted and convicted. While our investigation revealed that Mr. Stein had been involved in no wrongdoing with respect to the Five Points Bank, his testimony was, nevertheless, vitally important to the successful prosecution of the case.

When Mr. Stein was first approached by Special Agent
John Brady of the Federal Bureau of Investigation in late 1965,
he indicated his complete willingness to cooperate with the
Government in all respects. His cooperation with the Government
was full and complete, and continued from 1965 until the trial
of the case in March, 1968. During that lengthy period of time,
Mr. Stein was extremely helpful to the Government in the preparation of its case and was called as a prosecution witness at the
trial.

6. Prior to the trial of the Five Points Bank Case in March, 1968, we became aware of the fact that an indictment had been returned against Mr. Stein in the Southern District of New York. At no time, however, did Mr. Stein attempt to barter or bargain with our office for his cooperation in return for any leniency or other special treatment regarding the case pending against him in the Southern District of New York. At all times notwithstanding Mr. Stein's own legal problems, he was forthright, honest and completely cooperative with our office in the preparation and trial of the Five Points Bank Case.

FURTHER AFFIANT SAYETH NOT.

Sworn to and subscribed before me this 25th day of July, 1975.

On Twitalell

BEST COPY AVAILABLE

EXHIBIT 2 ANNEXED TO MEMORANDUM OF FACT

ASSOCIATES YCHIATRIC

THOMAS M. DOODY, M. D. GEORGE JACOSSON, M. D. WILLIAM A. LIONE, M. I. ALAN A LIPTON, M. D.

SIP N. L. T. J STREET MIAMI ST. FLORIDA

....

Re: Sidney Stein

. To bhom It May Concern:

Patient is a 46 year old married white wale with one daughter. He was seen on : 17-16-72 as an emergency. He was having selicidal thoughts and feelings and was quite fearful of acting thed out. He was in a fairly severe state of agitation accompanying his Depressive Reaction. Giving him an opportunity to talk out h feelings, gave him sufficient relief and hope to lift these feelings somewhat, come in for an appointment the next day. . .

Patient was seen again on 7-17-72. He was accompanied by a friend on this occ and on the previous meeting. He stated that he has needed to have a friend in hard company since about 1950.

Background history is psychologically pertinent. About 1951 patient was treat a severe Depressive Reaction by Dr. Louis Reder of Brooklyn, N.Y. He was give PCT after being referred by his family physician, Dr. Harry Lehman of Brooklyn Precipitative cause had to do with the death of a second child at birth - his child also died at birth about a year earlier. These two deaths precipitated & severe Depressive Reaction based on his mistaken idea that he was responsible became of second guilt. He had an enlarged testicle at that time which he felt was quest. by previous sexual experiences and therefore felt that his faulty sperms were \// responsible for these deaths. The reality was that he had a hernia. This coup finally had a third child, a daughter, who is now 20 years old.

About 1959 or 1960 patient was investigated by the SFC. Five years later, about patient states that he was indicted on a host of counts (78) . He was eventually acquitted of all but two counts - "Conspiracy & Praud" - manipulation of a listed stock. For the past six years this threat to his freedom has weighed heavily on his A feelings and during this time he was both anxious and depressed. His family physicprescribed Placityl, Luminol, Tuinal, etc. (Palanne) as sleeping pills. He would take increasing doses of barbiturates (as many as 4 to 5) proportionate to his anxie and depression. This mist have contributed to his depression. In May or June, 1977 patient was sentenced to two years in Jail and five years of unsupervised probation. He has been in court many times (approximately 100 times in the last twelve years.) This has ground his feelings and made his very voluerable at this time. his third child, a daughter, is now twenty years and getting married August !, 1972. Of cour. he is having sacked anxiety at the idea of not even attending his only child's wedding - the embarassment, humiliation, disappointment would be overphelming. He fel that so dany of his friends and relatives coning from one of town would be rerribly hurt by this.

EXHIBIT 2

ASSOCIATES ASA PSYCHIATRIC MIAMI THOMAS M. DOODY, M. D. GEORGE JACOSSON, M. D. WILLIAM A. LEONE, M. D. ALAN A LIPTON, M. D. . . . STREET TELEPHONE 3 7 3 - 2 1 2 5 MIAMI 37, FLORIDA He expresses marked fears of incorporation and is concerned about his ability to emotionally cope. For the past thirteen years or so - about 1959 - he has required the company of another human being - otherwise he becomes anxious - he begins (d feel desperate and reaches out for anyone. He might call four or five people i the middle of the might. He must go to sleep with TV going. Patient states th he cannot sleep in strange hotels or mately - he has two pillows that his mother made for him - one here in Mismi and the other in New York. If he travels elsewhere he takes his pillow along with him. He can only out Kosher Style Food - other for a is repulsive. "If I was to touch a piece of ham I would have to wash my bands twelve times." Patient can only wear wool or all cotton - he breaks out when welfin a synthetic fiber like Nylon - he feels that he is "locked in" - "like a straight: jacket" - "like the clothes don't breathe" - feelings of suffocation. I plan to pursue his problems in core depth in the next two weeks. However, in light of my findings at this time, I must express concern for this mans mental healt. The potential for a suicide is present now, with appropriate treatment it try averted. I feel that this report has to be viewed as a "Preliminary Report" until I have adequate time to work him up. My tentative impression is that were he to be incorporated now - there would be a definite risk to his life and/or ability to hang onto reality. Yours very truly. MIAMI PSYCHIATRIC ASSOCIATES William A. Leone, M.D. 1 1/11 .cci . it . Sidney Stein . more a contract of the contrac er. lobert tosentiloon

EXHIBIT 3 ANNEXED TO MEMORANDUM OF FACT

SUITE 307 975 ARTHUR GODINLY HOAD MIADE BEACH, FEORIDA 35140 A83

TELEPHONE 632.6-41

August 6, 1972

William Leone, M. D. 319 N. E. 23 Street Miami, Florida 33137

Psychological evaluation of Siency Stean

This 46-year-old married male was referred for psychological evaluation and was seen on 7/28 and 7/29/72. He was generally pleasant and cooperative, and completed all required tasks with minimal help from the examiner. He indicated that he has had some difficulty in sleeping; that he has been under intense stress as a result of business demands, and also indicated, indirectly, that he does not travel alone. The phobic-like patterns were also noted in the psychological test responses and suggest the intense, underlying ideational turmoil in this individual.

Tests administered included Bender Designs, H-T-P drawings, a Sentence Completion Form, the Rorschach, the HMPI and the Raven's Matrices.

Intellectually, he should have no difficulty in functioning in the Superior/Very Superior range. He was able to handle the abstract tasks in the Raven's with relative ease and no suggestion of intellectual impairment was noted.

on the Depression, Psychasthenia and hypteria Scales,

in keeping with the intense, but consciously deried, concerns regarding physical functioning. He is an intense and driven individual who would be in serious difficulty if his activities were curtailed or reduced. That is, the almost manic-like quality of his test patterns suggest that denial and displacement are major defense mechanisms for him and that he handles the chronic, underlying dysphoria and depression through his extreme activity.

Bender Designs, H-T-P Drawings and the Sentence Completion items all were consistent in suggesting strong
paramold, schizophrenic-like underpinning in this eyelothymic individual. There were repeated suggestions
of repetitive, consistent ideational concerns involving
his effectiveness and his "acceptance" by others. The
guardedness and evasiveness masked by his verbalizations
would suggest primary process functioning in an extremely
tense and disturbed individual.

The Rorschach patterns emphasized the paranoid functioning in terms of an almost complete lack of ability to
deal with the color areas. This type of pattern is
often encountered in individuals with schizophreniclike processes. The superficial mask of affability and
sociability serve primarily as techniques to avoid intense emotional interactions.

The movement responses were excessive, and the Rorschach patterns suggest that he is constantly driven to prove his effectiveness and his masculinity. The expression of enger is culturally determined and the patterns suggest that much of his anxiety is intenslized and results in sometic disturbances. While psychotherapy would be of help, it is unlikely that this individual could deal.

group of the said appropriate to be been a fore the

-3-

with therapeutic demands in the face of an extremely rigid and intense defense mechanism functioning.

In summary, this ho-year-old male was seen for psychological evaluation. The entire test battery suggests that he is a driven and compulsively active individual who experiences frequent somatic disturbances under stress. The patterns suggest paranoid schizophrenic underpinning in an individual who is forced to keep "running" if he is to avoid serious regression. If there are questions concerning the report please feel free to contact me.

Norman Reichenberg, Ph. D.

. NR/dm

EXHIBIT 4 ANNEXED TO MEMORANDUM OF FACT DISCHARGE SUMMARY

HUMAN RESOURCE INSTITUTE

NATIONAL MEDICAL CARE

ABSTRACT OF HISTORY AND TREATMENT

, · ent:

STEIN, Sidney

Aggress:

501 N Shore Drive, Miami Beach, Fla.

Ore of Admission:

10-12-72

Birth Date:

7-1-26

Occupation:

Broker

Religious Affiliation:

Jewish

Date of Discharge:

11-7-72

46

Marital Status:

Married

Previous admissions to HRI:

Nons

Previous psychiatric treatment:

Other Psychiatric Hospitalizations: 1951 Hospitalized Brooklyn, N. Y. for ECT

Hospital No.:

50101

Legal Status:

Voluntary

- PRESENT ILLNESS: Mr. Stein was admitted to Human Resource Institute of Miami on 10-12-72 at 10:30 P.M. His admission followed an overdose of Dalmane (approximately 8 capsules) "all I had", at approximately 8:30 P.M., whi a intransit from New York City to Miami. This patient has a long psychiatric history, but has been increasingly pressed for the past several months, consequent to legal difficulties centering around a "white collar crime". Sentencing to prison one day prior to his admission here precipitated a profound depressive (paranoid) reaction, culminating in a suicidal attempt and admission here.
- PAST HISTORY: Mr. Stein had his first psychiatric hospitalization in 1951 in Brooklyn, N. Y., for severe depressive symptomatology. He had been an intensely insecure and compulsive individual and following several stillbirths to his wife, he became preoccupied with the possibility that he had "defective semen", necessitating his admission there and treatment with electroconvulsive therapy. His depression responded at that time but he continued to be a driving and compulsive individual who was prone to marked mood swings. His intense insecurity took the form of surrounding himself with possessions, money and a pathologic need to succeed. These underlying tendencies persist to date and predispose him to depressive and paranoid regression. In 1959 he was charged by the Securities and Exchange Commission with a "white collar crime", leading to increased complexity to his life and increasing preoccupation regarding his future. Threats of incarceration dominated his ideation and was especially related to his fears of being unable to be in contact with his daughter or his wife. July of 1972, these fears were heightened by legal difficulties which may have prevented his attending his daughter's wedding. At that time he became suicidally depressed and was seen in emergency consultation by Wm. A. Leoni, M. D., on July 16, 1972. He was noted to be severely agitated and depressed and it was Dr. Leoni's opinion that Mr. Stein was in need of intensive psychiatric care and probable hospitalization.

Continued .

STEIN, Sidney

#50101

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Past HISTORY (Cont'd): Psychological testing by Dr. Norman Reichenberg, Ca.D., confirmed his clinical opinion. Mr. Stein was instructed to rejet the findings to his attorney but failed to do so because of "erbarrassment".

One day prior to his emergency admission here, he was sentenced to 2 years for his 12 year old crime. He became acutely agitated and fearful that his life would be in danger if he were incarcerated and became somatically preoccupied regarding his heart, paresthesias of his hands and quite delusional regarding "something in my intestine crawling around". While enroute to Miami by plane, he decided to "end it all", and took all of the medication he had available. Emesis was not induced until 2 hours later, after he confided in his companions. He was subsequently admitted to our hospital on an emergency basis.

PAST MEDICAL HISTORY: Usual childhood diseases. Tonsillectomy in childhood. Right inguinal herniorrhaphy 10 years ago. Also 10 years ago, following a bout of gross hematuria, he underwent cystoscopy here in Miami. His problem was allegedly diagnosed as prostatitis and has not recurred. There is also a 6 year history of herpes genitalis which recurs periodically. He allegedly weighed over 200 lbs. 2 to 3 years ago and on the advice of his physician, undertook a dietary regimen resulting in his weight reduction to approximately 160 lbs.

FAMILY HISTORY: Mother died of heart disease in her early 60's, and also suffered from hypertensive vascular disease. His father died of carcinoma of the prostate in his mid 70's. A 50 year old brother recently had cardiac surgery. A 53 year old brother and 56 year old sister are both living and well. The patient has been married for over 20 years and has & 20 year old daughter in good health. His wife had multiple medical and surgical problems in the past several years.

PHYSICAL EXAMINATION AND LABORATORY STUDIES: On admission, the patient was markedly lethargic and dysarthric and had a short attention span. He was crying almost constantly. B/P was 100/70 with normal respiration. There was a Grade II systolic murmur at the 2nd and 3rd intercostal space and no other significant findings.

Mental status examination on admission revealed a markedly depressed and suicidally preoccupied male, agitated and tearful. His preoccupation with his bowel was of delusional quality and he was generally somatically preoccupied. There were no hallucinations and specifically, no odor of alcohol on his breath.

Laboratory studies on admission included a CBC, urinalysis, VDRL, liver profile, SMA-12, and PA of the chest - all within normal limits.

COURSE IN THE HOSPITAL INCLUDING THERAPY: On admission, the patient was placed on suicidal precautions because of the profoundness of his

Continued

A-88

PAGE 3 DISCHARGE SUMMARY

STEIN, Sidney

#50101

COSPITAL COURSE (Cont'd): depression. Electroconvulsive therapy daily psychotherapy was first tried because of the patient's initial reticence. His sleep pattern and appetite improved to some degree but he continued subjectively depressed and preoccupied. The first pharmacotherapeutic agent - Triavil - was discontinued because of a beginning stomatitis and he was switched to Sinequan receiving doses upward to 200 mg until the last week of hospitalization when it was rediced to 100 mg p.o., daily. He was transferred from our acute treatment unit to our milieu therapy unit on 10-24-72 and was able to participate in milieu therapy, psychotherapy and psychodrama in addition to his individual psychotherapy with me. He evidenced slow but progressive improvement as regards his sleep pattern, appetite and mood but continued fearful regarding the possibility of impending incarceration and threats on his life. This latter element of situational depression persisted at the time of his transfer to the Federal facility. The underlying elements of his severe psychotic depressive reaction, however, did respond to the above regimen.

He was transferred by Federal Marshals to a Federal treatment facility for further evaluation and treatment.

RECOMMENDATIONS FOR FURTHER CARE: It would be my opinion that Mr. Stein be continued on Sinequan 100 mg p.o., daily for an additional 2 to 3 months and that he receive the benefit of prolonged analytic psychotherapy directed at his underlying deep-seated inferiority and inadequacy. The probability of further psychotic decompensation exists if he is not so treated. His emotional make-up would make the isolation and structure of incarceration impossible and would likewise predictably result in psychotic decompensation.

FINAL DIAGNOSIS: 1. Psychotic depressive reaction, severe, responding.

Dalmane overdose - suicidal attempt.

CONDITION ON DISCHARGE: Improved.

DGP:jh - 11-10-72

David G. Pinosky, M.

Medical Director

EXHIBIT 5 ANNEXED TO MEMORANDUM OF FACT JOSEPH W. SCOTT, M. D., P. A. JOSEPH W. SCOTT, M. D., FA.C.S. FA.C.O. PRACTICE L'MITED TELEPHONE SUITE 701 OUPONT BUILDING (305) 373-8427 STATEGOLOGY MIAMI, FLORIDA 33131 July 21, 1975 TO WHOM IT MAY CONCERN: In November 1972, Mrs. Beverly Stein had cancer in situ of the vulva proven by biopsy. Mrs. Stein refused treatment until April 3, 1973, at which time a partial vulvectomy was performed. October 3, 1974, recurrent leukoplakia of the v va was excised and was reported as dysplasia. April 22, 1975, sample biopsy of a pigmented lesion of the vulva revealed junctional nevus. On July 21, 1975, this junctional nevus was excised. Accepted treatment for cancer in situ of the vulva is a major surgical prodecure - total vulvectomy. To date, Mrs. Stein has refused this procedure. Sincerely yours, bp

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CASE NUMBER: 74 CR 573

UNITED S	STATES OF	AMERICA)	
-v-)	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO MITIGATE
SIDNEY S	STEIN)	
)	

COMES NOW the Defendant, by and through his undersigned counsel and submits this his Memorandum in support of the Motion for Mitigation filed herein.

I

A review of the American Law Institute Model Penal Code reproduced in the American Bar Association Minimum Standards for Criminal Justice relating to Sentencing Alternatives and Procedures suggests the following criteria in Section 7.01, for withholding sentences of imprisonment and for placing defendants on probation:

- (1) The Court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public because:
- (a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (c) A lesser sentence will depreciate the seriousness of the defendant's crime.

- (2) The following grounds, while not controlling the discretion of the Court, shall be accorded weight in favor of withholding sentences of imprisonment:
- (a) The defendant's criminal conduct neither caused nor threatened serious harm;
- (b) The defendant did not contemplate that his criminal conduct would cause or threaten serious harm;
 - (c) The defendant acted under a strong provocation;
- (d) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- (e) The victim of the defendant's criminal conduct induced or facilitated its commission;
- (f) The defendant has compensated or will compensate the victim of the criminal conduct for the damage or injury that he sustained;
- (g) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
- (h) The defendant's criminal conduct was the result of circumstances unlikely to recur;
- (i) The character and attitudes of the defendant indicate that he is unlikely to commit another crime;
- (j) The defendant is particularly likely to respond affirmatively to probationary treatment;
- (k) The imprisonment of the defendant would entail excessive hardship to himself or his dependents.

11

In June, 1972, fifty-eight lawyers, professors and public officials pondered the perplexing issues of correctional advancement

Pound American Trial Lawyers Foundation. The conferences produced twenty findings and recommendations. These are too lengthy for recapitulation here, but the main thrust is best expressed in two of the findings:

"I. Criminal sanctions can never be a cure for the ills of society. While at present they are considered necessary and are regretfully imposed for lack of a constructive alternative, criminal sanctions are essentially negative responses to the failings of human beings, to the failure to correct basic malfunctions and inequalities in society, and to public demands for retribution."

"IV. Imprisonment should be a last resort. The presumption should be against its use. Before any offender is incarcerated, the prosecution should bear the burden of proving in an evidentiary hearing that no acceptable alternative exists. An equal burden should be required for the denial or revocation of "good time", probation and parole, which really are only other ways of imposing imprisonment."

II

The Draft of the Federal Criminal Code provides in §3101 that:

"The Court shall not impose a sentence of imprisonment upon a person unless, having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is satisfied that imprisonment is the more appropriate sentence for the protection of the public."

IV

Before writing "Crime and Its Correction", John P. Conrad surveyed the correctional practices and attitudes of virtually every major country of the world, under the sponsorship of the Ford Foundation. He visited prisons, probation agencies, criminal and juvenile courts, and recorded over 1,400 pages of interviews with

criminologists, correctional and probation officers, behavioral scientist, inmates and probationers.

Mr. Conrad states his major conclusion cogently:

"The task of correctional advance is clear; to reduce to an absolute minimum the use of punishment [incarceration] through alternative positive measures." (Emphasis added)

V

That same conclusion was emphasized in a recent study of California's correctional system, directed toward restructuring and redirecting all phases of the correctional apparatus of that state, representing the best contemporary thinking in the field of corrections.

With regard to the lack of positive measures available to the sentencing Judge as alternatives to imprisonment, the study concluded that "Too little exists in the way of alternatives to institutionalization..." It added, on a hopeful note, that such alternatives were "...gaining increasingly high priority among progressive officials and practitioners..."

VI

Chief Justice Burger found that his concept of "constructive alternatives" is being put into practice in the little country of Denmark. There, he added, the evils of our adversary system of criminal justice are avoided and, instead, the process is marked by a "humane and compassionate disposition and treatment of the offender." A typical case, he notes, is disposed of in about six weeks far less than in the prolonged and creaky procedures of our courts — "and the first offender is almost always placed on probation under close supervision and free to return to a gainful occupation and normal family life.

BIERMAN, SONNETT, BEILEY & OSMAN,P.A. Attorneys for Defendant 28 West Flagler Street, Suite 600 Miami, Florida 33130

By				
	NEAL	R.	SONNETT	

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CASE NO.: 74-CR-573

UNITED	STATES OF AMERICA)	
-v-)	REQUEST FOR ORAL ARGUMENT
SIDNEY	STEIN	.)	
)	

COMES NOW the Defendant, by and through his undersigned counsel and moves this Honorable Court to allow oral argument on the Motion for Mitigation of Sentence and as grounds therefor would show:

- 1. Undersigned counsel believes that oral argument is essential for the purpose of fully advising this Honorable Court on certain matters which, because of the sensitive nature therein, could not be thoroughly discussed in the previously filed Motion for Mitigation of Sentence.
- The Defendant, if allowed by this Honorable Court, wishes to present brief testimony going to the question of the Defendant's psychiatric history, and his previous suicide attempt.
- 3. The Defendant believes that the matter could be heard by this Honorable Court in no more than thirty minutes.

UMEREFORE the Defendant SIDNEY STEIN, by and through his undersigned counsel respectfully requests this Honorable Court to grant oral argument on his Motion for Mitigation of Sentence.

BIERMAN, SONNETT, BEILEY & OSMAN, P.A Attorneys for Defendant 28 West Flagler Street, Suite 600 Miami, Florida 33130

By				
-	 MEAL	R.	SONNET	ľ

I HEREBY CERTIFY that a true copy of the foregoing was this 26th day of August, 1975 mailed to FRANK WOHL, ASSISTANT UNITED STATES ATTORNEY, United States Courthouse, Foley Square, New York, New York.

NEAL R. SONNETT



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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

SIDNEY STEIN.

74 Cr. 573 (CBM)

Defendant.

NEMORANDUM IN RESPONSE TO DEFENDANT'S MOTION FOR REDUCTION OF SENTENCE

Preliminary Statement

Defendant Sidney Stein has moved, pursuant to Rule 35 of the Federal Rules of Criminal Procedure, for reduction of his sentence. Although sentencing is a matter in the discretion of the Court, we believe this case presents certain unusual features which require comment.

Government's Position

Defendant Stein's career as a major securities

violator, equalled by few other offenders, plus the inadequate

pumishment which he received as a result of his prior con
victions, would justify the sentence imposed by the Court

in 'is case.

On the other hand, it is essential to law enforcement that offenders who cooperate with the prosecution receive some credit for their cooperation, along with adequately severe sentences to reflect fairly their crimes. Such a course will encourage other violators others similarly situated to follow a similar course of cooperation. This is particularly true in cases of white collar conspiracies, where frequently criminal enterprises are planned so that detection and prosecution are extremely difficult or impossible without the assistance of insiders.

Defendant Stein's cooperation since 1972, as set forth in detail in our sentencing memorandum concerning him, has been extensive.

Defendant Stein's papers in support of this motion state other examples of his alleged cooperation prior to 1970. While we are not in a position to verify the details of that cooperation since it occurred outside this district several years ago, we question the relevance at this time of any cooperation by Stein before he committed the crimes which are the subject of this indictment. Defendants cannot be allowed to build up savings accounts of cooperation which they expect to draw on when apprehended for crimes committed after the cooperation. We therefore respect?

plus cooperation provided by Stein subsequent to imposition of sentence should be the only cooperation which should bear on his sentence in this case. In this regard we wish to bring to the Court's attention that, since Stein was sentenced, he has continued to provide information to members of this office, as well as representatives of the Internal Revenue Service, Department of Justice, United States Attorneys Office for the Southern District of Florida and Miami Regional Office of the Securities and Exchange Commission. In addition, he testified before a Federal Grand Jury in Miami, Florida in September 1975.

We also believe that defendant Stein should receive favorable consideration for his apparently law abiding existence since 1972. In light of our experience, that securities offenders of Stein's type usually continue their illegal activities even after they profess to have decided otherwise, we find quite unusual the fact that we have no reliable information that Stein has committed any crimes since 1972.

Because, as we announced at the trial of this matter, the evidence is in conflict concerning the authenticity of defendant Stein's rather suspicious suicide attempt, we do not comment on that part of defendant Stein's motion papers.

Conclusion

Although we believe that a substantial sentence is appropriate and necessary in this case, we also believe that Stein should be given further consideration for the cooperation he has given the government. However, we are opposed to any reduction of his sentence of imprisonment below five years and any reduction in the \$25,000 fine imposed by the Court.

Respectfully submitted,

PAUL J. CURRAN United States Attorney for the Southern District of New York Attorney for the United States of America.

FRANK H. WOHL Assistant United States Attorney

- Of Counsel -

COURT'S ENDORSED MEMORANDUM DATED OCTOBER 22, 1975

The Court has reviewed the lengthy motion submitted by defendant Stein on this Rule 35 motion and the Government's reply which was finally submitted on 10/20/75 and denies the requested oral argument and denied the motion to reduce.

10/22/75 /s/CBM.

CASE NO. 74-CR-573 (CBM)

UNITED	STATES	Or	AMERICA	
-v-				
SIDNEY	STEIN			

PETITION FOR RECONSIDERATION OF MOTION FOR MITIGATION OF SENTENCE AND REQUEST FOR ORAL ARGUMENT

COMES NOW the Defendant, SIDNEY STEIN, by and through his undersigned counsel, and respectfully moves this Honorable Court for reconsideration of the previously filed Motion For Mitigation and his Request For Oral Argument, and as grounds therefor would show:

- 1. On July 28, 1975, the Defendant timely filed a Motion For Mitigation pursuant to Rule 35, Federal Rules of Criminal Procedure. On August 26, 1975, the Defendant filed a Request For Oral Argument, suggesting the necessity of a hearing to bring to the Court's attention certain sensitive matters which could not be set out in the pleadings, and requesting the privilege of presenting testimony from the Defendant's attending Psychiatrist.
- 2. Undersigned counsel subsequently learned that the Court had denied the above-mentioned pleadings on October 23, 1975, although no Order or other notification from the Clerk of Court was received either by undersigned counsel, local counsel (Leonard Glass, Esq., who had appeared as counsel of record at the time of sentencing), or, apparently, by the United States Attorney.
- 3. We believe there are most compelling reasons to ask the Court to reconsider its earlier denial of the Defendant's Motion For Mitigation and grant the relief requested on the following grounds:

A. STEIN'S MENTAL CONDITION IS NOW IN A DANGEROUS STATE OF DECOMPOSITION. When the Defendant's long standing, serious psychiatric history was brought to the attention of the Honorable Frederick vanPelt Bryan on October 31, 1972, following the imposition of sentence in Case No. 65 Crim. 732, Judge Bryan found the evidence strong enough to order a full psychiatric study, pursuant to Title 18, United States Code, § 4208(b).

That study, performed by a battery of Government doctors at the Federal Medical Institution at Springfield, Missouri declared "professional medical unison" that the Defendant was "but a step away from total personality disintigration and possible psychosis". The report further concluded that the Defendant "could easily decompensate at any time" as a result of the threat of incarceration, and that he was "tenuously close to a total break from reality".

Following his release from prison, the Defendant was forced to undergo constant, long-term treatment by his treating physician, Dr. David Pinosky. Under this continuous out-patient care, the Defendant was able to gain some improvement in his mental condition.

Now, however, after having been incarcerated since March 28, 1975, there is substantial medical evidence that the Defendant has reached a state of mental decomposition from which he might never recover.

We have appended to this Petition, as "Exhibit A", a letter from Dr. David G. Pinosky, a highly respected member of the Miami medical community, and a Diplomate of the American Board of Psychiatry and Neurology. As the report indicates, Dr. Pinosky had an opportunity to personally examine the Defendant on September 4, 1975, while the Defendant was in Miami to appear as a Government witness before a Federal Grand Jury. Dr. Pinosky had a

further opportunity to form an opinion concerning the mental condition of the Defendant during a follow-up telephone conversation on November 20, 1975.

Dr. Pinosky strongly states his opinion that Stein is "in need of emergent psychiatric intervention which would be difficult to implement in a penal institution".

We recognize that this Honorable Court's imposition of sentence reflected its desire to punish Stein for his misdeeds. But it is not at all over-dramatic to observe that, if Dr. Pinosky is correct in his medical conclusions (and those conclusions have previously been fully supported by Government psychiatrists), the sentence imposed by this Court may ultimately be a literal death sentence, or leave Stein, upon his eventual release, in a mentally deteriorated state not much better than literal demise.

We believe that this Honorable Court also considers, as do all conscientious members of the judiciary, that incarceration should also have the effect of assisting a defendant in being rehabilitated, so that he can return to society a normal, productive, law-abiding citizen. But, again, if medical opinion is correct, incarceration in this case may very well have the totally opposite and unjust effect of making the Defendant a mental cripple who will never be able to properly return to society, if return at all. In that case, Stein's imprisonment will have resulted in dehabilitation, rather than rehabilitation.

We cannot believe, however sternly the Court viewed Stein's past criminal conduct, that the Court would have intended such a potentially harsh result.

And, while we recognize that one letter attached as an exhibit to the Defendant's Petition does not establish beyond doubt that the Defendant will suffer the fate suggested, we do strongly urge that enough evidence has been presented to ask that the Court exercise its discretion and make further inquiry into the matter. Such further inquiry could be accomplished

by appointing psychiatrists of the Court's choosing to examine the Defendant, and thereafter allowing a hearing to determine what effects long-term incarceration will have on the Defendant's sanity, or by ordering that Stein undergo a full psychiatric study at a Government institution pursuant to Title 18, United States Code, § 4208 (b), and thereafter holding a hearing to further determine sentence.

Whatever vehicle this Honorable Court might wish to employ for purposes of such inquiry, we urgently request, not only as the Defendant's counsel, but as an officer of this Court, that some inquiry be made immediately. Undersigned counsel has had constant contact with the Defendant since 1972, continuing during the period of his incarperation. The marked difference in the Defendant's behavior is startling and, from undersigned counsel's obversation, fully supports the tragic consequences that are suggested by professional medical views.

B. THERE IS SUBSTANTIAL EVIDENCE THAT STEIN IS

ALREADY REHABILITATED. We know that the Court is aware that,
although Stein was not sentenced until 1975, the offenses for
which is was convicted date all the way back to 1968 and 1969.
We suggest that the Court should reconsider its original sentence in light of strong evidence that Stein completely ceased
his criminal activities three years prior to his conviction in
this case, and has thus demonstrated that he no longer requires
incarceration to achieve rehabilitation.

Very few individuals have received the scrutiny from Government agencies that Stein has. In addition to the criminal investigations, Stein has, by court order, been required to file quarterly reports of his transactions with the SEC. Further, since 1972, when he was released by Judge Bryan, he has been in constant contact with agencies of the United States Government as a witness and undercover agent.

Thus, we believe a high degree of weight should be

accorded to the following statement made by the United States
Attorney in his Memorandum In Response To Defendant's Motion
For Reduction Of Sentence (P. 3):

We also believe that defendant Stein should receive favorable consideration for his apparently law abiding existence since 1972. In light of our experience, that securities offenders of Stein's type usually continue their illegal activities even after they profess to have decided otherwise, we find quite unusual the fact that we have no reliable information that Stein has committed any crime since 1972.

While the above statement by the Government with respect to Stein's law-abiding nature since 1972 is compelling, the attached letters from experienced professionals who deal with lawbreakers on a daily basis are almost overwhelming in their conclusions.

"Exhibit B" is a letter dated October 3, 1975, from Joseph F. Job, the Sheriff of Bergen County, New Jersey. Because of security problems in placing Stein in a regular federal prison, due to his continued cooperation and testimony, he has served the bulk of his term in the Bergen County Jail Annex, a small institutuion where Sheriff Job has had the opportunity to observe him on a daily basis. This experienced law officer concludes:

It is my opinion that any further jail term would serve no useful purpose as far as this individual is concerned since I consider him fully rehabilitated and one who can assume his role in society as a responsible and capable citizen. (emphasis ours).

It is rare for such a highly placed law enforcement officer and corrections official to agree to favorably comment on a prisoner, but the unequivocally strong opinion voiced by the Sheriff must be given great weight, and should be strongly considered by this Honorable Court.

"Exhibit C", a letter from the Chaplain of the Bergen County Institutions, dated September 30, 1975, should, we believe, also be strongly weighed in Stein's ravor. As the Chaplain points out, this is only the second letter ever written by him on behalf of an inmate. Nevertheless, the Chaplain is firm in his conviction that Stein "is now ready to assume his role in society as a fine and decent citizen of our country". His belief is underscored by the following excerpt from his letter:

I am so deeply convinced of his genuine desire to 'go straight' from now on, Your Honor, that I would not hesitate to assume full responsibility for him is he were placed under my supervision.

There are others, of course, who respect Stein and who admire the good character traits he has demonstrated over the years, as evidenced by the letters attached to this Petition as Exhibits "D", "E", "F", and "G".

But, while it is not at all unusual for a man's friends to stand with him in times of trouble, it is almost urheard of for professionals, charged with a responsibility to law enforcement and the administration of justice, and who see and deal with a man in a prison setting with full knowledge of his sentence and record, to be as affirmative in their stands as Sheriff Job and Rabbi Lieberman.

We believe that this Court should give deference to their integrity, experience and ability to observe prison behavior. Their comments offer strong support to our Petition, and provide compelling grounds for relief.

C. THE COURT SHOULD GIVE FURTHER CONSIDERATION

TO STEIN'S EXEMPLARY ASSISTANCE TO THE GOVERNMENT. There are
few persons, defendants or non-defendants, perhaps in the recent
history of law enforcement, who have given such dedicated and
constant cooperation to federal agencies when requested. In
six years as an Assistant United States Attorney and Chief of
the Criminal Division for the Southern District of Florida, and
as Special Assistant U.S. Attorney in two other districts,

undersigned counsel has rarely seen better examples of willing cooperation.

Moreover, Stein's cooperation is even more exempl ry for the following reasons:

- 1. Much of Stein's assistance was not confession of his own activity, but was service as an "undercover agent" in investigations where he had no connection, but was merely asked to "play a role" to assist federal agencies. In this regard, he was requested to, and did act in an undercover capacity for both the FBI and DDA, when a "new face" was required by them.
- 2. Much of Stein's cooperation was at substantial personal risk and financial cost. The proof of the danger of his activities is clearly illustrated by the fact that he has not been allowed to go into normal prison population, but has been, from the very beginning, incarcerated in special institutions normally reserved for sesitive witnesses and prisoners.
- 3. Much of his cooperation was offered at a time when he was not facing the threat of prosecution or incarceration, and thus, had no need to build a "bank" of cooperation upon which to later draw.
- 4. Stein's cooperation and assistance has continued, not only since the beginning of his incarceration, but also after his original Motion For Mitigation was denied and he was so informed.

We emp'asize that, because of the dangerous and sensitive nature of some of his assistance, it cannot be detailed in these pleadings.

But we ask this Honorable Court to reconsider its

prior ruling and allow a hearing so that both the Defendant and
the Government may fully and properly inform the Court of the
full facts regarding these matters.

4. We firmly believe that the above discussion fully supports our request for the Court's reconsideration and ultimate relief. We next observe at this point that the Government's original response to our Motion For Mitigation recognized the

validity of our request for mitigation, and indicated no objection to a reduction of the Defendant's sentence by as much as fifty percent (50%).

- 5. This Honorable Court has at its command a wide range of alternatives as sentencing tools other than continued lengthy incarceration:
- A. The Court could impose special conditions of probation that would insure the Defendant's continued law-abiding conduct. For example, the Court could order that Stein totally refrain from any dealings in securities, publicly traded companies, or any businesses regulated by the SEC. This would be far more restrictive than the current requirement that Stein file quarterly reports of his transactions. The Court could impose a ntinued cooperation with the Government as a further special condition of probation. The Court could require constant psychiatric care as a condition, and could further order that Stein submit periodic reports to the Court or his Probation Officer from his treating physicians. The Court could order that a certain amount of his time be spent at public service projects compatible with his legitimate experience in business and management.

All of the above examples, or a wide range of others, would give the Court strict supervision and control ove: Stein, would be innovative in approach, and would reverse the trajic mental deterioration that is now inevitable.

B. The Court could modify its sentence pursuant to the provisions of Title 18, United States Code, § 4208 (a)(2), allowing the Defendant to become eligible for parole "at such time as the board of parole may determine". This would allow earlier consideration by supervising authorities of Stein's exemplary prison conduct, and would indirectly have a salutary affect on his mental condition, by at least giving him some hope of early release, if his adjustment warranted such.

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- C. The Court could reduce its sentence by such amount as would make him eligible for parole consider tion prior to the 3 1/3 years required for eligibility under his present sentence.
- 6. This Defendant stands on a narrow precipice that could either send him hurtling to the depths of mental illness, or allow him to step back and out to a world of usefulness to his family and his society. We know that the weight of such factors is always a heavy burden upon the Court and that even the longest reflection and deepest prayer cannot always quarantee the ultimate correctness of the decision. But we earnestly hope that, after such reflection, this Honorable Court will agree with our belief that the interests of justice and humanity will best be served by the granting of this Petition.

WHER FORE, the Defendant, SIDNEY STEIN, by and through his undersigned counsel, prays this Honorable Court to:

- 1. Grant this Petition For Reconsideration.
- Grant a hearing so that the matters above may be fully developed for the Court.
- Mitigate the sentence previously imposed in this case.

Respectfully submitted,

LEONARD R. GLASS 540 Madison Avenue New York, New York 10022

and

BIERMAN, SONNETT, BEILEY & OSMAN, P.A. Suite 600 Roberts Building 28 West Flagler Street Miami, Florida 33130 Attorneys for the Defendant

BY GOOD STATE

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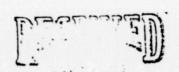
TELEPHONE 324-1813

EXHIBIT A ANNEXED TO PETITION

DAVID G. PINOSKY, M.D., P.A.
DIPLOMATE, AMERICAN DEARD OF
PSYCHIATRY AND NEUROLOGY

DAVID GORDAN PINOSKY, M. D.
JORGE H. CAYCEDO, M. D.
MARIO IBANEZ, H. D.
JEANETTE LUDWIG, M. D.
HERBERT L. ROTHMAN, M. D.
F. VICTOR ROVIRA, M. D.
MARY F. YOUNG, M. D.

November 24, 1975



EIERMAN, SONNETT & BEILEY, CA.

Neil Sonnet Attorney at Law 600 Roberts Building 28 West Flagler Street Miami, Florida

Re: Mr. Sidney Stein

Dear Mr. Sonnet:

I am writing because I am extremely concerned about the progressive deterioration in my patient, Mr. Sidney Stein, noted by me when I interviewed him in Federal Court on September 4, 1975 and again following a telephone communication with him on November 20, 1975.

You will remember, Mr. Stein has been under my private psychiatric care since October 12, 1972 when a spicide attempt resulted in his hospitalization. He was treated for a psychotic depressive reaction, responding somewhat prior to his transfer to the Federal Penitentiary where he again decompensated. Following release from that facility, he was under my continuous out-patient care for psychotherapy and pharmacotherapy and evidenced progressive improvement as noted by the disappearance of his depressive symptomatology and increasing productivity, vocationally and socially. When threatened by the indictment that resulted in his recent incareceration he again decompensated and it was my strong professional opinion that he would become severly decressed and perhaps attempt suicide if faced with no hope of mitigation of his sentence. My fear has been validated in that he has undergone progressive weight loss, withdrawal, and is evidencing feelings of hopelessness, futility, and is feeling that suicide seems the best resolution of his difficulties.

DAVID G. PINOSKY, M.D., P.A. DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

TELEPHONE 324.1813

DAVIO GORDAN PINOSKY, M. D.
JORGE H. CAYCEDO, M. D.
MARIO IDANEZ, M. D.
JEANFTTE LUDWIG, M. D.
HERBERT L. ROTHMAN, M. D.
V. VICTOR ROVIRA, M. D.
MARY F. YOUNG, M. D.

Page 2

I stand ready to assist you in any way possible to bring this medical matter to those responsible for Mr. Stein's incarceration. It would be my opinion that this man is in need of emergent psychiatric intervention which would be difficult to impliment in a penal institution. I urge you to seek remedy to this problem as soon as possible.

If further information is desired, please do not hesitate to contact me.

Sincerely,

David G. Pinosky, (M.D.

DGP/cdc



OFFICE OF THE SHERIFF

COUNTY OF BERGEN

HACKENSACK, NEW JERSEY 07601

201 - 646-2209

JOSEPH F. JOB SHERIFF

October 3, 1975

To Whom It May Concern:

Mr. Sydney Stein, who has been in our custody, has conducted himself in an exemplary manner and has obeyed all rules and regulations which govern the affairs of our institutions.

It is my opinion that any further jail term would serve no useful purpose as far as this individual is concerned since I consider him fully rehabilitated and one who can assume his role in society as a responsible and capable citizen.

Respectfully submitted:

Joseph F. Job, Sheriff Bergen County

jfj:v

R



Department of Pastoral Care County of Bergen

SERVING THE PUBLIC INSTITUTIONS OF BERGEN COUNTY

CHAPLAIN'S OFFICE BERGEN PINES COUNTY HOSPITAL PARAMUS, NEW JERSEY 07652 PHONE (201) 261-9000

September 30, 1975

Honorable Constance Baker Motley U.S. District Judge U.S. Court House So. District of New York 1 Saint Andrews Plaza, Foley Square, N. Y. 10007

Dear Judge Motley:

I am writing to you on behalf of Sidney Stein, presently an inmate in the Bergen County Jail Annex.

As Chaplain for the Bergen County Institutions I had numerous occassions in which to talk to and counsel Mr. Stein. In the course of these sessions, I feel I developed much insight into his inner self.

For the past few years I have spent my summer vacations down in Florid with my family and met him there several times with many of his fine friends.

The reputation he enjoys is that of a very philanthropic person who gives of himself and his monies to many charitable organizations. He is very proud of his role as a "family man." His love and devotion to his family is to be greatly admired. He also takes care of his 80 year old mother-in-law who has been living with him for the past fifteen years.

Dear Judge, at this point I am writing to you because I am fully convinced that he is now ready to assume his role in society as a fine and decent citizen of our country. In almost every conversation we had he told me how truly sorry he was for his past mistakes and how he would lead his life in the future. I am so deeply convinced of his genuine desire to "go straight" from now on, Your Honor, that I would not hesitate to assume full responsibility for him if he were placed under my supervision.

I say this without any reservations, because I am convinced that he will never see the inside of a jail ever again.

September 30, 1975

I might add, Your Honor, that he has willingly and voluntarily cooperated with the Government and will continue to do so in the future.

Dear Judge, in all the many years in my Ministry, this is only the second letter of this kind that I have ever written to any Judge on behalf of an inmate.

He impressed me that his primary and only goal in his life from now on is to be with and take care of his dear wife who is suffering from that dreaded disease--cancer.

Trusting your understanding of my sincere convictions in this matter, I do hope you will take these feelings into consideration when you will be formulating your final judgment.

God bless you and yours always,

Sincerely,

Rabbi Henry N. Lieberman Chaplain Bergen County

Institutions

HNL: bw

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TEMPLE EMANU-EL

1701 WASHINGTON AVENUE

Miami Bach, Florida 33133

October 31, 1975

To Whom It May Concern:

IRVING LEHHMAN, D.H.L., D.D.

RABBI

I am writing on behalf of Sidney Stein, who has been affiliated with this congregation for sixteen years.

During all these years, Sidney has been deeply involved in the religious life of our community and has contributed liberally to all important charities, both local and national. I have known him personally as a friend and I am extremely fond of him and his family; his daughter was confirmed and married on our pulpit, and Sidney, himself, is a man of great warmth and deep religious convictions.

I respectfully request that you give him every possible consideration.

Irving Lehrman

Sincerely,

October 17, 1975

Re: Sidney Stein 501 N. Shore Drive Miami Beach, Florida

To whom it may concern:

For the past 15 years, Sidney Stein and his family have been good friends of mine and of my family. We lived near each other during all these years.

Sidney has always been a devoted father and a good family man. He has been a good neighbor. He has been active in the betterment of his community.

Very truly yours,

Leonard Tobin
5231 N. Bay Road

Miami Beach, Florida

EXHIBIT F ANNEXED TO PETITION

A 117

LAW OFFICES

GROVER, CIMENT, WEINSTEIN & STAUBER, P. A.

ROBERT L.GROVER
NORMAN CIMENT
MARVIN WEINSTEIN
SHERWIN STAUBER
EDWARD M.KOCH
JEFFREY J. WAXMAN
HERMAN T. 1515
ALLAN S. FRIEDMAN

MIAMI BEACH, FLORIDA 33140

AREA CODE 305

November 13th, 1975

Neal Scnnett, Esq. 28 West Flagler Street Miami, Florida

To Whom It May Concern:

The undersigned has known Mr. Sidney Stein for approximately ten years and during that period of time, I have had the occasion to participate with him in various charitable functions wherein he has been an energetic worker and contributor as well.

I have known him to be a conscientious family man who has had an extremely close relationship with only daughter.

Yours truly,

Norman Ciment

NC:sal

CENTRAL OFFICE: 770 EASTERN PARKWAY BROOKLYN, N. Y. 11213 TELEPHONE: (212) 492-9250/1 . CABLE ADDRESS: HAMELACH. NEW YORK

Merkos Linyonei Chinuch inc. The Trans

תחת נשיאות כיק אדמויר מליובאוויטש רבי מנחם מענדל שניאורסאהן שליסיא מיסודו של כיק אדמויר רבי יוסף יצחק זצוקללהיה נבניה זייע שניאורסאהן מליובאוויסש

> FLORIDA HOME OF THE LUBAVITCH MOVEMENT 1401 Alton Rd., Miami Beach, Florida (305) 672-8947

> > Oct. 14, 1975



This is to verify that I have known Sidney Stein, of 501 N. Shore Dr. Miami Beach, Fla., for the past seven years. During our acquaintance, I have found him to be a good husband, a family man and an individual involved in many charitable endeavors, as well as supporting our own institution.

Sincerely,

Rabbi Abraham Kori

PECETVED

SHERMAN, SONNETT & BEILEY, P.A.

PHW:mg

February 4, 1976

Honorable Constance Baker Motley United States District Judge United States Courthouse Foley Square New York, New York 10007

Re: United States v. Sidney Stein

Dear Judge Motley:

This letter is submitted in response to defendant Stein's motion for reconsideration of his motion for reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

For the reasons set forth in our memorandum in response to defendant Stein's Rule 35 motion we respectfully suggest that a reduction defendant Stein's sentence to a term of imprisonment of approximately five years would be appropriate. We oppose any reduction of the fine imposed by the Court.

In the event that Your Honor declines to reduce defendant Stein's sentence, the Government would not oppose defendant Stein's motion that the Court specify that Stein may become eligible for parole at such time as the parole board may determine, pursuant to 18 United States Code, \$4208(a)(2), or designate a period less than one-third of his sentence in which time he may become eligible for parole pursuant to 18 United States Code \$4208(a)(1).

Respectfully yours,

THOMAS J. CAHILL United States Attorney

By:

FPANK H. WOHL
Assistant United States Attorney
Tel.: (212) 791-9088

COURT'S ENDORSED MEMORANDUM DATED MARCH 9, 1976

Petition for reconsideration denied.

See Court's statement at time of sentence. /s/ CBM.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT NEW YORK

3/12/16

UNITE' STATES OF AMERICA

-v-

SIDNEY STEIN

MAR 12 1976

MAR 12 1976

MAR 12 1976

MAR 12 1976

74 CR 573 (CBM)

NOTICE OF APPEAL

S 1 R S:

NOTICE is hereby given that SIDNEY STEIN the defendant herein, hereby appeals to the United States Court of Appeals for the Second Circuit, from the Order entered herein on March 9, 1976.

Dated: New York, New York March 11, 1976.

RESPECTFULLY SUBMITTED,

LEONARD R. GLASS 540 Madison Avenue New York, New York 10022

and

OSMAN, P.A.

By :

Neal R. Sonnett Suite 600 Roberts Building 28 West Flagler Street Miami, Florida 33130

Attorneys for Defendant

TO:

ROBERT B. FISKE, JR. United States Attorney United States Courthouse Foley Square New York, New York 10007

CLERK OF THE UNITED STATES
DISTRICT COURT: SOUTHERN DISTRICT
OF NEW YORK

SIDNEY STEIN
Bergen County Jail Annex
160 South River Street
Hackensack, New Jersey 07601

MR. HIGGINS: Part of the area of cross examination, I know by several individuals here, is going to concern itself with the motivation of Mr. Stein, what he was seeking to attempt in consulting with these psychiatrists. We are going to be submitting, at least some of us, your Honor, Mr. Stein actually went through a charade, even to the extent of telling all sorts of ridiculous stories to psychiatrists to attain a goal of not having to be incarcerated, your Honor, and that he actually had a game plane from the outset of his first troubles with the Government of certain procedures and fall back procedures, in order to attain the ultimate objective of staying out of jail.

One of these, your Honor, was to put up a false charade of having psychiatric problems. Even the Government's psychiatric report from Springf eld, if your Honor reads it, suggests that part of Mr. Stein's statements are part of a big put-on, and this is an area of cross examination that I strongly feel we are entitled to go into.

This man --

THE COURT: Well, this matter, you say, is contained in the Government's report from Springfield?

MR. HIGGINS: It is suggested in the report.

THE COURT: What report are you referring to, some report made with respect to his compentency to stand

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trial?

MR. HIGGINS: Yes, your Honor. It is a report marked as a Government exhibit here. It's been supplied to us, your Honor. We have also a good-faith basis --

THE COURT: That is in connection with some prior case that he was indicted in?

MR. HIGGINS: Yes, your Honor.

THE COURT: And the report says what?

MR. HIGGINS: For example, your Honor, Government's Exhibit 3636, reading from page -- well, it is page lof the text, "Stein is a very capable individual and he has a myriad of resources in the community which he can advantageously utilize to help him adjust. He is not a hardened criminal. He is selfish and egotistical and not above taking advantage of others to enhance his general position," and just goes on and on, your Honor, talking about what Stein would do, how he manipulates people, and also about his desires to stay out of jail.

It strongly suggests, in my recollection, that Steir would go to just about any measures to stay out of jail.

We have a good-faith basis, your Honor, to ask this witness, that isn't it a fact that he told several people many years back of a particular procedure, a game

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worse his mental condition.

plan he was going to follow in order to stay out of jail, 3 to the extent of cooperating with the Government only just a little bit, to the extent of claiming he was psychiatrically ill, and to incarcerate him would actually advance and make

> And he actually submitted medical reports on that point, and also the fact he threatened suicide if he had to go to jail. This is all an area of cross examination that we feel is proper, your Honor.

> MR. CHESTER: Not only has he used this method, but it's been effective for the last ten years. If he is behind bars for two months, he's done good. I think Mr. Rubinson, he discussed with Mr. Rubinson, this game plan not to get in jail if he has to put the whole world in jail and use psychiatrists to fake suicide, because he is a meglo-. maniac. He thinks he is smarter than anybody, and he is, and he fakes these psychiatrists and he will do anything to stay out of jail.

He will contend he is cooperating with the Government and like in this case and other cases, and I think it is very important we get into this in depth.

MR. ANDREWS: May I be heard? The record discloses at his prior trials that the very day before he wasto surrender in Danbury, Federal Prison, there were -- to a

two-year sentence, he performed a suicide gesture. The U.S. Attorney represented to the Court it was phony. He was sent to a mental institution to be examined. The U.S. Attorney then took the position that all of these tactics were phonies to keep him out of prison. He was successful.

The Federal Judge believed this psychosis, this borderline psychosis that the psychiatrist said he had, but the significant fact is the Government at that time characterized it as a sham for no purpose other than to keep him out of prison.

At this point it suits their purpose to minimize Stein's conduct, but I submit we must have complete lattitude in the area of, one, his mental condition, and, two, his attempts to use it successfully in the past in order to evade the responsibility for what he has done.

THE COURT: Did you have something else to say, Mr. Wohl?

MR. WOHL: Well, your Honor, I see that, in light of the several different theories, perhaps it is difficult to rule in advance, but I would think that a lot of what the defense counsel -- what they are entitled to do, for example, to show he is frightened of going to jail is not what I am talking about.

I think some discretion should be involved in

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I don't know exactly what the strategy of various defense counsel is, but it just seems to me the only function of some of these details could be just to embarrass the witness and won't go one way or the other to establish whether he is seeking to manipulate the Government or whether he is too ill to testify or just pretending to be ill.

MR. ANDREWS: I think the things Mr. Wohl is talking about are matters of just common decency and good taste and discretion among lawyers, and I, for example --

THE COURT: Well, yes, I gather that is what he is talking about.

MR. ANDREWS: I can tell the Court I have no wish, and see no purpose, in going into whatever Mr. Stein's sexual problems are. I don't feel they have any relevance.

But I don't -- I would strenuously object to having my hands tied with respect to some of the other prepostrous things he has told psychiatrists and accomplished his purposes through them.

I can represent, if it makes Mr. Wohl feel better,

I don't intend to embarrass Mr. Stein by his sexual problems

which he has discussed in the past, but that would be the

only area I would be willing to say now I won't go into,

and I feel the rest of it, though it may embarrass Mr. Stein,

is certainly not going to scandalize anyone and is in the area of good taste and certainly has probative value at the trial.

THE COURT: I can't rule on any particular matter in advance of the question being put to the witness, but I would like to direct the attention of counsel to the new rules of evidence which take effect in July, Rule 608, which would seem to summarize the problem here, and by which we should be guided in our cross examination of Mr. Stein.

In view of the lateness of the hour, I think what we will do now is to change our normal luncheon period by recessing now until 1:15 for lunch.

Do you want to inform the jurors?

MR. ANDREWS: Would your Honor permit just
a slightly longer luncheon recess today, in view of the fact
we are about to confront probably the most important
witness in the case to give counsel a little more time to
confer before we begin our cross examination?

THE COURT: All right. We will recess until

MR. ANDREWS: I would request --

THE COURT: Would you inform the jurors, please?

MR. FISCHETTI: Your Honor, my last application, is your Honor has ruled that the document to be sealed for

2 BY MR. RUBINSON:

Q Mr. Stein, let's start with January 1968. What crimes did you commit in 1968, starting with January, month by month?

A I would have to go to a list, which I don't have with me.

Q It is a long list? You can't remember all the crimes you committed?

A I maintain that any stock that I bought or sold,
whether it was on the American Stock Exchange, New York
Stock Exchange or over the counter, I did something criminally
wrong in every one of those stocks.

- Q How many stocks were involved?
- A Every stock that I have ever traded.
- Q Quantity, how many, 250 --
- A Hundreds, two, 300 stocks.
- Q You always say five, ten, 15, 20, thousand dollars, two, three, 4,000 -- how many?
 - A I don't know.
 - Q Let's get the list.

MR. RUBINSON: I would like to go over the list before I resume because I have a list and I want to know what is on his list that he left out, because I have a list. I would like to see that list.

1	bme 6	Stein - cross	3918
2	The incider	nts were 1959.	•
3	Q	Were you sentenced in that case?	
4	А	Yes.	
5	Q	To how long?	
6	Α	Two years.	
7	Q	Did you commence serving the sentence	e immediately
8	after the	sentence was imposed?	
9	A	I don't know what that means.	
10	Q	The day the sentence was imposed, we	re you taken
11	to prison?		
12	λ	No. I appealed the case.	
13	Q	So you were released on bail?	
14	A	Yes.	
15	Q	What did you do then?	
16	A	We took it to the Supreme Court.	
17	Q	When did you commence serving a pris	on sentence?
18	A	Sometime in '72. I am not sure. I	think it was
19	October or	November of '72.	
20	Q Q	Did you attempt to commit suicide im	mediately
21	before you	were supposed to commence your priso	n sentence?
22	Λ	Yes.	
23	Q	As a result of that attempt, were yo	u placed in
24	a mental i	nstitution?	

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No.

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1	bme 7	Stein - cross	3919
2	Q	Were you placed in some sort of hospi	tal?
3	A	Yes.	1
4	Q	Thereafter, how long did you stay in	that hos-
5	pital?		
6	A	Short while, two, three weeks.	
7	Q	Did you reserve a report from your do	octor that
8	the pending	g incarceration was creating serious m	mental
9	problems fo	or you?	
0	A	Yes.	
1	Q	Did you then so into a prison hospita	al in Missouri
2	λ	Yes.	
3	Q	Was that not a mental hospital?	
4	, λ	No.	
15	Q	Were you treated there for mental dis	sorder?
16	A	Yes.	
17	Q "	While in that hospital, did you indic	cate to the
18	prison doc	tor that you could not stand the thou	ght of being
19	incarcerat	ed?	
20	A	Yes.	
21	. 0	Did you tell him you would do anythi	ng to avoid
22	being inca	rcerated?	
23	A	Yes.	1
24	Q	Were you in fact mentally disturbed	at that time

or were you pretending to be mentally disturbed at that

letter being sent to Judge Bryan by the Assistant United

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Was that on or about what -- do you recall a

1	mde		Steir	r - cross		A 404	/ 32
2	Q	Was ce	rtioraci	denied?	Would	that term	n b e
3	correct?						
4'	A	That's	correct.				
5	Q	On Aug	ust 7 of	1972, af	ter you	were de:	nied
6	cert. in t	he buck	еуе с	ction, d	id you	come into	the U. S
7	attorney's	office	and toll	l them yo	u had l	een talki	ing to som
8	attorneys	in Wash	ington a	out fixi	ng the	Buckeye o	case and
9	the jail to	erm?					
10	A	Yes, s	ometi:	along th	at time	2.	
11	Q	You to	ld them	rou had b	een ha	ving conve	ersations
12	regarding	fixing	the tro	mar dent	ence?		
13	A	I don'	t know th	ne time t	able, l	out I did	tell them
14	that.						
15	Q	If Mr.	Wonl wi	ll correc	t me to	omorrow,	will
16	change the	blackb	oard.				
17		Tell u	s the nar	me of the	man in	n Florida	who first
18 ·	told you a	bout at	torneys	in Washir	ngton wi	no might h	be able
19	to fix the	two-ye	ar sente	nce in Bu	ickeye?		
20	Α	A man	by the na	ane of Ha	rvey Se	egal.	
21	1	Harvey	Segal,	n friend	of ten	years' d	uration at
22	that time?						
23	A	lie was	somepoin	v I knew	ion	a friend	of mine.

He just lived next to the place you kept your

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yacht up, is that correct?

1	mde	Stein - cross	4046
2	A	That is not correct.	
3	Q	What is incorrect about that?	
4	A	He lived there about two months.	
5	Q	Next to where you kept your yacht to	ied up?
6	A	I don't think I had a yacht when I	met him.
7	Q	Was it a yacht or boat?	
8	A	I don't think I had a boat when I me	et him.
9	Q	You sold it before that?	
10	۸	Wo.	
11	Q	Did you buy it afterward?	
12	A	No.	
13	Q	Did you ever have a boat?	
14	, а	Yes.	
15	Q	How big?	
16	Λ	42 foct.	
17	Q	Who did Harvey Segal tell you to go	to see in
18	Washington	to fix your two-year sentence?	
19	Α	A man by the name of Quase.	
20		Tell the jury who Quase is.	
21	A	A man.	
22	0	Tell them what else is he?	
23		MR. WOHL: I will object to this, y	our Honor.
24	À	A lobbyist.	
25		MR. WOHL: I don't see the relevance	e.

i i		MR. KEEGAN:	You will. I	only hav	e two hours,
ii i	and if you	don't think	I can connect	it up it	is my problem
ti		THE COURT:	We will have	to get an	offer of

THE COURT: We will have to get an offer of proof. We are going to recess a little early this evening. The jury is excused until 10 o'clock tomorrow morning.

(Jury excused.)

offer of proof with respect to where we are going now? I don't know where we are going. What's this all about?

MR. KEEGALI: Maybe Mr. Stein could leave! He knows the story.

THE COURT: All right.

You are excused until 10 o'clock tomorrow morn-ing.

(Witness excused.)

MR. KEEGAN: Your Monor, this man tried, just to give the jury an idea of the man who is the Government's principal witness -- we have already shown he tried to fix his two-years by going to Washington, by attempting to have attorneys bribe somebody in the Department of Justice, that he started his psychiatric background, building a foundation for a psychiatric background, as soon as he heard his sentence was affirmed by the Supreme Court.

He also started working with Quase to see if he

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could get a fix on his two-year sentence.

THE COURT: The problem I am having with that is you say a fix on his two-year sentence.

What do you mean by that?

MR. KEEGAN: He went to Dr. Quase, Winston Childs, Evans North, and he offered them money, I think it was \$100,000, if they could have his two-year sentence reduced.

They said they could. We paid them a check of \$10,000, and they were working on it. When he realized they were phonies and couldn't fix his case, then and only then did he come to the Government and offer to make a case on these individuals.

I want to show how his mind works. He placed both sides against the middle. He was already established with his psychiatric history te never revealed to the Government until Judge Bryan said based on his cooperation I will not reduce his sentence.

Then he came in with the psychiatric history.

That is his whole life's history.

THE COURT: Maybe we can get to what happened then --

MR. KEEGAN: Pardon me.

THE COURT: I said maybe we can get to what

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happened then, Mr. Wool.

What happened after that?

MR. WOHL: As I understand the situation, your Honor, what happened basically was there was this event in which Mr. Stein attempted to commit suicide or attempted to commit suicide on the simplane.

At that time the U.S. attorney's office was trying very hard to get him to surrender. This was right at the time that he was supposed to surrender.

THE COURT: Mr. ins. please sit down so I can get this straight. I just asked him to tell me and there you are interrupting.

MR. HIGGIMS: He has already --

THE COURT: Please sit down.

MR. WOHL: As I understand it, the apparent attempt to commit suicide, taking no position, I know some of the lawyers say it was really and some say it was not really, perhaps, it occurred right before the time he was about to surrender.

Mr. Stein, as I understand it, obtained an order from a Judge in Florida restraining the Government in this district from requiring him to surrender until after --well, at least immediately.

Thereafter, ir. Stein's attorneys appeared and

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sought to have his sentence reduced and sought to prevent his surrender based on this suicide attempt, and also a short stay in a psychiatric facility, a private facility, down in Florida.

During this period of time the Government here couldn't get him into jail because he had the order from the Court down in Florida restraining us from doing that.

As I understand it, at that time the Government -- this was in October of 1972 -- at that time the Government opposed Mr. Stein's motion for reduction of sentence, and the Government's position was that this suicide attempt was nothing more than a characle to prevent him from going to jail.

It is my understanding, however, that at that same time Mr. Stein had cooperated to some extent, and had assisted in various investigations.

Obviously, the U.S. Can't keep that a secret from a Judge and the Court and so the Government was required to write a letter, which Mr. Wing wrote, the October 1972 letter, setting forth whatever cooperation there was.

THE COURT: This was before he was actually sentenced?

MR. WOHL: No. He had already been sentenced.

He was under a two-year sentence. This was after basically when he was trying to get his sentence reduced.

The U.S. Attorney's Office in this district, and as I understand there wasn't any other Government office involved, opposed that motion.

THE COURT: But they did send a letter --

MR. WOHL: Saying he cooperated?

THE COURT: Sitting forth his cooperation in connection with his atternt to get the sentence reduced.

MR. WOHL: Right. We sent a letter in effect saying here's the man's poperation. We are required to disclose it. Here it is.

And we also appeared and said we opposed the motion to reduce the sentence.

THE COURT: All right.

MR. WOHL: Thereafter, on Mr. Stein's attorney's motion, as I understand it, he was sente to Springfield to have an evaluation done. The evaluation was returned from Springfield in January of 1973, I believe. At that time, somewhere in the same period, Mr. Stein appeared as a Government witness in a narcotics trial. There was then a proceeding before Judge Bryan of which there is a written record, and that, I believe, is the hearing of January 30, 1973. Mr. Robson has a copy, I have a copy.

As I recall, Mr. Stein at that time, through his attorneys, claimed several reasons why his sentence should be reduced. One is he claimed that he cooperated with the Government.

Two, he claimed that he had psychiatric difficulties.

Three, I believe he claimed that his wife was ill at that time, and --

MR. KEEGAN: There were only three.

MR. WOHL: Maybe there were only three. I had a vague recollection there was a fourth one. Perhaps not.

In any event, Judge Bryan on the basis of that record, then reduced his sentence, and that's what happened.

The Government, so far as I know, never consented to, never supported, never argued in favor of reduction of Mr. Stein's sentence. So far as I understand it, all the Government did was what it was obligated to do, which was it made Judge Bryan aware of the cooperation that Mr. Stein had provided.

So far as I know, there was no additional letter of cooperation sent. However, I believe that it -- and I haven't read this record of January 30 for a while, but my recollection was that Mr. Feiffer, who was the Assistant U. S. Attorney involved in the narcotics case, did make a statement to Judge Bryan at that time saying that, in effect,

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which was back in October, and the time they were then talking, which was Jan Try, Mr. Stein had cooperated in the narcotics case ar. Ir. Feiffer was making the Judge aware of that.

That is my a lerstanding of what happened.

THE COURT: All right. Mr. Robson, did you want to say something about this?

MR. RODSOUR All I was going to try to do was set forth what happened earlier. So far as I know, that is accurate. The only triar I talak is somewhat misleading is the statement with respect to the Government's position on this.

As your Honor knows, from having heard statements on sentence many, many times, maless the Government has an affirmative position in favor of a prison sentence, what the Government does when it feels a defendant is cooperating is merely advise the Court of that fact and then keeps quiet. The Government rarely, if ever, makes a recommendation that there be no prison sentence, and there is sort of an unwritten understanding between Courts and U. S.

Attorney's Office that when the Government limits itself to a statement of the defendant's cooperation that's the Government's way of saying that it has some interest in the

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defendant's treatment but is not making a recommendation.

THE COURT: Do you agree with Mr. Wohl's statement that the Government opposed the motion to reduce sentence?

MR. ROBSON: I don't have any transcript of that. That is not my understanding of what transpired. There is no transcript of the proceedings in my possession when Judge Bryan sentenced this defendant for observation. But I don't believe that the Government opposed it at that time. I think they presented the Court with a rather detailed letter setting forth every single instance that they could think of in which Mr. Stein had been of some assistance to the Government, including telling them about somebody who they neard -- that he had heard might be involved in the theft of securities in Montreal.

THE COURT: Yes, that was in the letter.

MR. ROBSON: I think quite obviously it was their intention to show the Court that he was being helpful, and then to leave it up to the Court, which is a standard procedure when they have a cooperating afendant. The way it's always been done to my knowledge, and to your Honor's knowledge.

I am sure that they did not actively oppose it.

I haven't got the transcript, but I would be very surprised if there was evidence they actively opposed it.

MR. WOHL: Your Honor, my recollection is that the letter that is in evidence is dated in October of 1972. I have before me a copy of Walter Roland's affidavit submitted to Judge Bryan on October 30, 1972, which is after the letter by Mr. Wing. It seates in the first paragraph, "I make this affidavit in opposition to the defendant's"—referring to Stein — "motion, one, to stay the execution of the sentence imposed by this Court pending the outcome of civil proceedings in Florida and, two, for mitigants of the sentence imposed."

Then Mr. Roland goes on to make a detailed statement in this affidavit setting forth our office's position, which is that the activity going on down in Florida was nothing more than an effort by Mr. Stein to both delay and reduce his sentence, and he concludes at the end of that, "Wherefore, it is respectfully requested that the defendant's position is to mitigate sentence and to stay execution of sentence be in all respects denied."

I would submit that that is somewhat more opposition to a motion of this sort than is just standing mute.

MR. ROBSON: I didn't know that.

MR. KEEGAN: It sounds like it is.

THE COURT: Just a minute, Mr. Keegan. I haven't recognized you. Mr. Higgins, did you want to say something?

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MR. HIGGINS: Yes, your Honor, just in terms of chronology, the reason I jumped up was because Mr. Wohl had jumped from July of 1972, when the Supreme Court denied the certiorari petition.

Just to fix your Honor's attention on the actual chronology, the Supreme Court denied in June or July of 1972; at that time Mr. Stein was covertly seeking to fix the two-year sentence imposed on him.

He now knows the tupreme Court has denied. He is now satisfied the fix will be unsuccessful. He then goes in on August 7th to the U. S. Attorney's Office, agrees to work undercover on that case, as well as other cases.

He does that for two months, approximately

At the same time, he brings on a Rule 35 motion to reduce the sentence. That motion is considered by Judge Bryan, and it is at that motion that the October 10th letter from Mr. Wing is submitted to Judge Bryan detailing what Mr. Stein's cooperation has been.

Judge Bryan then denies the Rule 35 motion on October 14th or 15th, as I remember.

Mr. Stein is then noticed to surrender here in the Southern District on the 14th or 15th.

He asks for permission to fly down to Florida to say goodby to his wife and children and family members.

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Judge Bryan, the wonderful gentleman that he is, gave him permission.

Mr. Stein then gets on board an Eastern Airlines flight, I think it was, with fifty or more other passengers, with a good friend of his sitting next to him, gets on a flight going down to Florida, where you have an airport with a radio, a stewardess there, fifty other people, a good friend of his sitting next to him, and proceeds to to take barbiturates, knowing full well the plane is flying over five major cities, with a radio, with a friend there, all sorts of emergency equipment available.

When the plane actually landed in Miami, or wherever it was, there was an ambulance waiting for him.

This is a man who supposedly attempted a suicide. He didn't take arsenic or cyanide or anything. This was a big sham and a big put-on, your Honor, and we want to go into the actual chronology to show that this man is lying here today when he says it wasn't a sham. He is still perjuring himself.

That is the chronology I wanted to make clear to your Honor.

Mr. Wohl just avoided that chronology, went on to the October 10th letter, and all of a sudden he got down

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Stein-cross

into January 1973, some 90 days later.

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Just again to give you the chronology, the man is now down in Miami, an alleged suicide attempt. He goes into a prearranged private hospital under a prearranged doctor's case.

These are the doctors he already started to set up back in May of 1972 before the Supreme Court had denied He is under their care. cert.

He notifies the Court, supposely when he is unconscious, he can't surrender the following day because he is now in the hospital, and is under care down there for a couple of weeks.

Then the application comes on to stay surrender pending his hospitalization, and that is the affidavit put in in opposition to that application, to stay his surrender.

Judge Bryan gets the application from Mr. Roland and says, "No, what we will do, if he needs hospitalization, is send him to Springfield for a 4208B report and that is what happens.

He goes out there for 81 days, and proceeded, we submit, to lie to psychiatrists out there, and then they bring the report back in.

how, in January of 1973, in this period, this interim period of 81 or 90 days, somehow I believe this man

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Stein-cross

managed to get on the stand and testify either in the grand jury or at a trial on a narcotics case, and it is based on Mr. Feffer's statement, the man who prosecuted that case to Judge Bryan, that we would submit that Judge Bryan reduced the sentence.

Just as an aside on that case, your Honor, that was Mr. Apinitis and Mr. Walshin, I believe, who were the defendants in the narcotics case.

Their defense was that they were entrapped by

Mr. Stein, that Mr. Stein approached them and asked them to

fly some narcotics in from Mexico, and he paid them all

sorts of money.

I think that is another area of the extent to which this man will go to stay out of jail, setting up two other defendants, inducing them to commit a crime so he can testify against them and get his rear end out of jail.

Thatis the chronology of what Mr. Keegan is attempting to do, your Honor, trying to follow that all the way up to the end.

THE COURT: So that after he gave the Government the cooperation in the narcotics case, and after Judge Bryan received the report from Springfield, his sentence was reduced?

MR. HIGGINS: Yes, your Monor.

It is also interesting to note at that time, that although he was allegedly cooperating with the Government, he did not tell them about the Stern-Haskell case. Indeed, it wasn't until the prosecution involving Mr.Quays, who I think is the same fellow involved in the alleged fix attempt on his two-year sentence— there was a trial of that case in 1973, in which this man again allegedly testifying for the Government and cooperating with the Government actually took the Fifth Amendment when asked about Stern-Haskell events.

This is a man who for lack of a better word has been trying to handle his way out of going to jail for the last fifteen years, and he has been doing it successfully, and it is a big sham and a big out-on.

I respectfully submit when that man gets up on the stand and says that suicide attempt was not a sham, if this jury and your Honor don't really believe that is a lie, I think it is outrageous.

This is a man who perjured himself and would say anything to stay out of jaul. That is why we believe the facts in the psychiatric report itself are so relevant.

THE COURT: What does the report say? I haven't seen it.

MR. HIGGINS: It just talks about his relationship

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Stein-cross

with his mother and--

THE COURT: The report said, according to Mr. Stein, that he should stay in jail.

Is that what it says?

MR. HIGGINS: Yes, your Honor, the report in substance says: We have interviewed and studied the man. He has told us all these things. We find that really they are a lot of hogwash and he is trying to put us on, and reports back to Judge Bryan to that extent.

The report again says on one page: "He is not a hardened criminal but he is selfish, antagonistic, and not above taking advantage of others to enhance his position and say all sorts of ridiculous things just to stay out of jail."

The basic substance of the report is that the man is a sham. This alleged insanity is a sham.

THE COURT: Mr. Keegan, do you have something to say?

MR. KEEGAN: No, your Honor.

MR. ANDREWS: May I just add to that, your Honor?

THE COURT: Yes.

MR. ANDREWS: The report indicates that the psychiatrists do say he is a borderline psychotic, and not totally psychotic. They indicate while everything Mr. Higgins tells

SOUTHERN DISTLICT COURT REFURTERS U.S. COURTHOUSE

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Stein-cross

you is true about his manipulativeness, and the extent to which he will go to stay out of prison, they do indicate his borderline psychosis and terrible fear of prison would lead him to do just about anything.

Once he knows he is safe, and once he knows he is not going to jail --

THE COURT: Do you want to read that part?

MR. ANDREWS: Mr. Grimes has pinned it right

down.

MR. ROBSON: Might I indicate --

THE COURT: Let's take one at a time, Mr. Robson.

MR. ANDREWS: It will take us a moment to find, your Honor. It is a long report.

We have extracted from the guotes. It will be guicker to do it this way.

At one point the report says, "H e expressed marked fear of incarceration and is concerned about his capability to emotionally cope."

If you will bear with me for another moment we will find the otherpart.

It says "Psychologically he is not yet psychotic but has uncertainties relative to the eventual disposition of the instant case" -- and I assume they are talking about the perjury conviction which he was about to go to prison on--

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"and continual stress caused by years of business speculation have inclined to leave him in a unstable emotional state. He suffers drastically from a depression neurosis."

"There is a professional medical uni on suggesting that Stein is only a step away from total personality disintegration and possible psychosis."

They put in borderline.

If I can have another moment I can find the line that says once he indicates he is going to be free he will cooperate fully.

It also indicates he has an unprecedented pattern of cooperating with the Government to obtain his freedom.

They allude at one point --that "During the past several years Stein has established a record for appearing in court either as a witness or a defendant which seemintly is unprecedented."

At another point they say, "There is little doubt that this decline in his mental health is directly related to recent threats of indictment, trial, and possible incarceration. It would be my professional opinion that Mr. Stein would be emotonally incapable of facing threatened indictment and that if forced to do so would probably decompensate further and might even again become suicidal.

When brought to face these things the report

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Stein-cross

suggests he will do anything because to him it is just the end, if he has to face prison or prosecution.

It is imperative that the jury know this, Judge.

THE COURT: Do you have something else, Mr.Robson?

MR. ROBSON: I am not quite sure how this should be handled but we have here a witness who has stated with I assume the approval of the Government that he has an understanding that he is not to lie on the witness stand and that if he does tell the truth nothing further will be done to him by the Government with the exception of his being submitted for sentencing in this case.

We now learn that this witness' testimony today with respect to that spicide attempt is in the opinion of a Government attorney, who submitted an affidavit to the Court perjurious.

THE COURT: Just a minute. I am not following this.

MR. ROBSON: In 1972 an Assistant U. S. Attorney submitted an affidavit to Judge Bryan in which he stated that in his opinion the suicide attempt was a sham. This witness has testified in this Court that the suicide attempt was not a sham, it was a true act.

THE COURT: Yes.

MR. ROBSON: As a result, apparently it is the

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Government's position that he just committed perjury, that he committed perjury back in 1972, and he is committing perjury on this witness stand.

I think the Government has an obligation to bring that fact out to the jury, that it does not believe its own witness' testimony, that it has in affidavit form contradicted that testimony and that statement on a prior occasion.

I have never seen a situation like this where the Government has a witness on the stand perjuring himself with the knowledge of the Government.

all about, which I didn't understand before, because I was not familiar with these facts as the lawyers and the U.S. Attorney are, I would say that the defendants could bring this out to show that the witness is apt not to tell the truth, but I couldn't bring myself to rule on any of these matters without having this background, and that is why we stopped to go over this.

I couldn't figure out what was going on here, because I thought, as I said before, that the Government
agreed with the witness' testimony, which I understood was
that when Judge Bryan received a certain report or letter
he reduced the sentence because the witness had cooperated
with the Government.

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Stein-cross

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It turns out it is a much longer story than that, which we have just heard, so that that can be brought out by the defendants to show that this witness has a motive to lie.

Now, with that understanding, tomorrow morning,
Mr.Keegan -- if you can calm yourself --

MR. KEEGAN: I will try.

THE COURT: It is unprofessional conduct for you to be so angry that you can hardly speak when you get up to cross-examine a witness. You are not to become personally involved in your client's case.

MR. KEEGAN: Yes, your Honor.

THE COURT: You are not to become so angry with the witness that you can't even speak. So you try to calm yourself and go through this tomorrow in a calm fashion.

That applies to the other lawyers as well who have been getting up and being very emotional when they ought not to be.

MR. ANDREWS: I would just like to point out to
you that I was probably remiss in failing to give you a trial
brief on this point. It took us several weeks to dig out
the information and we sort of took for granted that you
knew.

THE COURT: Unfortunately we don't know about every

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case that has ever happened in this court.

MR. CHESTER: Does that remove the restriction upon me from going into his psychiatric background?

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THE COURT: Yes, yes.

No, just a moment. that is misunderstood. You still may not go into this --

MR. CHESTER: The teddy bear.

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THE COURT: You may not go into the sex matter,

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the teddy bear stuff and all of that.

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Your time is up anyway, but the other lawyers, as

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Mr. Andrews has brought out, can bring out the material,

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and the conclusion they reached, and bring out the suicide

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attempt was a sham, as Mr. Higgins has brought out, and bring

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out that Mr. Stein attempted to fix his sentence, and that

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kind of thing, but we are not going to go into this embarass-

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ing the witness with talking about the teddy bear and his

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mother and his sex and all of that kind of thing. You don't need that.

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As to you, it would be abused, as I have pointed out.

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So we will recess now until ten o'clock tomorrow morning.

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MR. WOHL: Your Honor, could I say one brief A hone that by the fact that I didn't jump up to

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thing?

say anything after Mr. Higgins made his statement, the Court Doesn't infer that I necessary think Mr. Higgins' statement is entirely accurate about what happened.

I think it is all debatable and it can all go to the jury, but I was just concerned that the Court seemed to be accepting it.

THE COURT: I don't accept at all. It has to be brought out and the jury will decide what portions are to be believed.

But I had no idea what this was all about, I had never even heard of it before, so that with this clarifying background of where this testimony was going, I understand now what they are trying to do.

All right, ten o'clock tomorrow morning.

(Adjourned to February 28, 1975, 10:00 a.m.)



14	Α	That is correct.
15	· Q	That was about March of '72?
16	А	I don't recall what month, b
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'71, I am sorry. Q

facing you in the Buckeye case?

That is correct.

Did you tell Dr. Quase that you wanted his assistance in either indefinitely postponing your incarcera tion or in wiping out the two-year sentence?

Something like that. I don't recall what my A exact conversation was.

Stein - cross

Was he an alcoholic? .

THE COURT: Sustained.

Possibly.

Was the fee of \$100,000 for this service discussed between you and Dr. Quase?

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Stein - cross

A Something like that.

Q Did Dr. Quase then put you in touch with an attorney in the Washington, D. C. area by the name of Evans North?

A I don't know that he put me in touch with anybody at the first meeting. I don't recall what month I
did get in touch with North, but I did get in touch with
North sometime later on.

Q After you met North, you had conferences with Dr. Quase and North and yourself pertaining to fixing the sentence in your case?

A Yes.

Q Did Dr. Quase represent to you that he was a lobbyist for certain African nations?

A He represented that he was a lobbyist amongst many, many other things. I don't recall all of the things he told me.

Q Do you recall if he represented that he was a lobbyist for African nations, some of them?

A I don't know, he could have told me that.

Q Did you discuss with him the possibility that he could participate with you ir a deal you were putting together for an African airlines?

A Yes.

Q Was the amount of that deal something in the area of 12 to \$15 million?

A Yes.

Q Did Dr. Quase tell you or did Evans North tell you what they were going to do about your sentence?

A Yes. They made all types of promises and inuendos.

If you refer to the Government record of it, you would be more familiar than my memory because there were tapes in that conversation, it was monitored by the United States

Government.

Q Wait a minute.

There were tapes beginning in August?

A You are asking me about a conversation with North. I never talked to North without a tape.

Q Prior to August --

Λ I am just answering your question -- I forget your name.

THE COURT: Mr. Keegan.

Q I am asking you if you were taping Dr. Quase prior to August 7, 1972.

A I don't know what date, but I never taped him without Government supervision.

And you didn't go to the Government until August
of '72?

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A I don't recall the date. When the tapes were used, it was under Government supervision authorized by the Courts.

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I haven't asked you that question.

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A I am trying to answer your question. You are saying did I tape him before, no.

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Q You did not tape him in the early discussions, is that correct?

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A Which gentleman?

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Q Either Quase or North?

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A I didn't meet North until later on.

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Q Your only discussions early in the game were

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with Dr. Quase which were not taped?

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A As far as I recall, until the Government became aware of my conversations with them, and I think they did

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almost from the beginning, there were no tapes used at

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all.

Q You don't recall the first contact with Dr.
Quase was in March?

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A I don't know what month it was.

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Do you recall a period of time from your first contact with Quase until you came to John Wing, Assistant United States Attorney, of some three or four months?

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A It could have been that long, yes.

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SOUTHERN DISTUCT COURSE

2	Q	And	Quase	was	making	a	lot	of	phony	or	craz
3	promises	as to	what	he c	ould do	at	out	VO	ir con		

A I don't know what you mean by phony or crazy promises.

- Q Did you believe the promises he was making?
- A No, I did not.
- When you stopped believing, did you then go to the United States Attorney's Office?
 - A I didn't believe him to start with.
 - Q You never believed him?
 - A No.
- But it still took you three or four months before you reported that you were dealing with a man who could possibly fix your case, is that right?

A No. When I became aware of the man's attempt to contact Government officials in Government offices, I became appalled by the fact that somebody would try to do that and my contact with Mr. Wing, I think, was just at that time and that is how he happened to be the one I discussed it with.

I can't remember the exact time element.

Q Up until the time they mentioned contacting Government officials, you thought the hundred thousand dollars was for a legal attack on your sentence, is that

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2 your testimony?

A No. You want to try that case in this court?

The case is coming up again and I don't know why we are talking about it.

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That case has been tried in this court, hasn't Q it?

I understand it is going to be tried again. A

I don't know if this U. S.Attorney is familiar with it and I may have to be a witness in it.

THE WITNESS: If your Honor wants me to continue to answer this gentleman's questions, I will.

THE COURT: I don't know what you have in mind.

You say some other case will be coming up?

THE WITNESS: This case was a hung jury and it is going to be retried agai. according to the U.S. Attorney that tried the case and I think we are going into a case.

I am not trying to practice law but I think we are going into matters about my relationship with these people that may be tried again.

MR. KEEGAN: I am sure the Government will be willing to stipulate that all four men were acquitted.

THE COURT: These were the men to whom the bribe had been given?

MR. KEEGAN: Yes.

MR. WOHL: We will have to look it up to make certain. I think Mr. Stein may be correct, that there was a hung jury in that case on some counts but if your Honor would like us to explain that, perhaps we should

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Stein-cross

approach the bench.

MR. KEEGAN: I don't have that much time. I will accept whatever Mr. Wohl's research uncovers.

It is my understanding they were acquitted.

THE WITNESS: That is not my understanding.

MR. ROBSON: I don't know whether this witness is now becoming a participant. His role I assume is to sit there and answer questions, not advise the Court what is going on around here.

THE WITNESS: I think it is my duty to tell the Court about something that could come up again.

MR. ROBSON: Could this witness be directed to sit up there and act like a witness?

THE COURT: What he is doing is bringing something to my attention which he indicates he probably
thought he should do so for the Court's advice as to whether
he should continue his testimony.

Proceed.

Q We established yesterday, if I recall, that your neview was turned down in the Buckeye case by the Supreme Court in approximately June of 1972, is that correct?

- A That is correct.
- Q And thereafter did you approach Mr. Norman Rubinson

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Stein-cross

Q Did you invite Evans North down to the hotel which you have an interest in in Miami, the Caribbean?

A I don't recall if I invited him or we arranged for a meeting there.

Q You arranged for a meeting in your hotel?

A No, he was meeting somebody there by coincidence.

Q Who was he meeting?

A Some other man, some other lawyer.

Q Did you arrange to have the room that Evans North was to occupy bugged?

A Absolutely not.

Q The FBI did not place bus in that room?

A They did not.

Q Did they place bugs in the conference room?

A Yes.

Q Did you yourself wear an electronic transmitter during the course of your dealings with Dr. Quase and Evans North?

A Yes.

Q And you taped telephone calls with them?

A Yes.

O Did you eventually deliver a \$10,000 check drawn on your personal account in the Chemical Bank, at 360 East 72nd Street, to either Evans North or Dr. Quase as a down

Stein-cross

payment on the fix?

Yes.

And at the time you did that you had two or three thousand dollars in the personal account?

I don't recall, but the Government knew I was doing it. It was under their instructions that I did it.

- You didn't have enough money in the account --
- I answered your question, Counselor. I said I don't know.
 - You don't remember?
 - That's right, I don't remember.
- Do you recall testify ng in the Quase case, on

MR. WOHL: Could I have the date, Mr. Keegan? MR. KEEGAN: July 24, 1973.

"I went to the bank and I set up with the bank that they would return the check uncollected. I knew the check was no good when I handed it to them and the bank accommodated me by putting the uncollected stamp on

Do you recall giving that testimony?

Yes.

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Wasn't it your concern, Mr. Stein, that the bank would honor the check even if you didn't have sufficient

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Stein-cross

funds in that particular account because you had deposited \$200,600 from the Viking transaction a short time before this?

A I didn't deposit \$200,000 from the Viking transaction.

You just asked me about Sidney Stein's account at Chemical Bank.

Why are you asking me about \$200,000? Are you making a statement that I had \$200,000 in an account that belonged to me, Sidney Stein?

Q I didn't say it was in your name.

That's what you said, Counselor. Don't tell me about something that is not so and you have the papers in front of you--

MR. HIGGINS: Your Honor, I object. He is running on again.

- A I am not running anywhere.
- Tell me in what account you put the \$200,000 Q from the Viking transaction?
 - That is not the question you asked me.
 - I make mistakes, I am not perfect.
- You are making mistakes and you have a book in front of you. Read what you have to read and ask me the question and I will answer.

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will go to the second question.

MR. KEEGAN: I withdraw the question.

- Q Did you go to the bank official and tell him to put a stamp on the \$10,000 check when it came in "Uncollected funds"?
 - A Yes.
 - Q Did you have to pay him to do that?
 - A No.
- Q You were such a good customer, he was willing to accommodate you?
 - A Now I will answer your question.
- Q Yes or no, were you such a good customer that he was willing to put "uncollected funds" on a check?
- A I must answer that question with more than a yes or no.

MR. KEEGAN: I withdraw the question.

A Great.

MR.WOHL: I object to it because it calls for the state of the mind of the bank officer, anyway.

THE COURT: Yes. Objection sustained.

- Q On October 12, 1972, having cooperated in the Quase investigation, did you make a motion to have your two-year sentence reduced?
 - A I made a motion and I don't recall the date, and

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if you say it was the 12th, you have to show me a document.

Do you have such a document?

- Q Was it denied on October 12th?
- A Do you have such a document?
- Q I am withdrawing the question.
- A You can't ask the question -THE COURT: He is withdrawing the question.
- Q I am withdrawing the question.

Do you recall Judge Frederick vanPelt Bryan denying your motion to reduce your two-year sentence based upon your cooperation?

- A When?
- Q On October 12th.
- A I don't know. I would have to see the document.
- Q Do you remember the date of the letter you complained about yesterday? That is October 12th.
 - A That is what I would like to see.
 - THE COURT: Let him see the letter.
 - Q Do you recall him --

THE COURT: Let him see the letter to refresh his recollection.

MR. KEEGAN: May I conduct my cross-examination?

If I do it his way, I will not get anywhere.

THE COURT: Mr. Keegan, the witness says he would like to refresh his recollection as to the date by looking at a document.

Now, show him the document so he will--

MR.KEEGAN: Will the Government stipulate the motion was denied on October 12th?

MR. WOHL: Well, that will take me a moment. I can certainly state that Mr. Stein is right and Mr. Keegan is wrong about the letter being October 12th.

The letter is October 10th.

MR. KEEGAN: That could be very significant in this case.

MR.WOHL: I object to Mr. Keegan's comment. He comes out with an inaccurate statement and then criticizes the witness for not agreeing with Mr. Keegan's inaccurate statement.

MR. KEEGAN: You know as well as I do the date is not what I am getting at.

Do you stipulate to October 12th--

MR. WOHL: My transcript says October 10th. I will stipulate it is October 10th.

THE WITNESS: I would still like to see the document.

Q I know you would, but we don't need it now. We have

a stipulation that on October 12th Judge Frederick vanPelt Bryan denied your motion to reduce your two-year sentence, which request was based upon your cooperation, and the letter that was read to the jury yesterday; do you recall that?

A Yes.

Q You then asked Judge Bryan, through your attorney,
I assume, for permission to fly to Florida to say goodby
to your wife and family; do you remember that?

A Yes.

Q And he granted you that permission?

A Yes.

Q And you were to return by four o'clock the following day to surrender; do you recall that?

A Yes.

Q You got on a plane with a friend, Mel Adler, didn't you?

A Yes.

Q And at some point during that flight you told Mel Adler that you had taken an overdose of pills, is that correct?

A That's correct.

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Ö		Λnd	after	taking	the over	rdose	of	pills	5, 3	you
passed	out	and	don't	recall	anything	unti	1 a	day	or	two
later,	is t	that.	corre	ct?						

A I don't have any perfect memory, but I have some vague recollection of events, yes.

- Q Did you pass out?
- A Yes.
- When did you come to?
- A As they were taking me off the airplane.
- Q Did you pass out after that?
- A I don't know.
- Q Reading from transcript in Quase, July 26, '73, page 1250.
- "Q When you got off the plane, you were in sort of extremity, or you lost consciousness.

Did you learn what your condition was when you got off that plane?

A I don't remember anything that happened from -from the time I got back into my seat until probably a
couple of days, a day later, I don't know. It is all kind
of hazy."

Was that your answer?

- A That is what I just said.
- You don't remember that thing until a couple of

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days or a day later?

A I say, things were hazy. Again, I say they were hazy.

- Q That was from the time you got back into your seat in the plane until a couple of days later, is that right?
 - A I don't know what you mean.
- Do you recall calling Norman Rubinson from the hospital because they wouldn't let you in?
 - A No, I don't.

THE COURT: What was that?

- Q Do you remember calling Norman Rubinson from the hospital because they would not let you in?
 - A Who wouldn't let me in?
 - Q The hospital.

THE COURT: Wouldn't let Norman Rubinson in?

MR. KEEGAN: No, wouldn't let in Sidney Stein.

Your Honor, maybe the witness understands it.

A I don't understand what you are saying
THE COURT: The question was not clear. Mr.

Keegan.

MR. KEEGAN: I will rephrase it.

Q Do you recall placing a call from the hospital to Norman Rubinson because the hospital officials would not

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Q Do you remember Norman Rubinson coming there with his wife?

A I vaguely remember them coming to the hospital.

Q Didn't you tell Norman Rubinson to call Dr.
William Leone, who you had visited in July of '72, so that
he could get you admitted to the hospital?

A Absolutely not.

Q Do you recall calling your attorney the following day in New York, five times?

A I don't think I used the phone for a long period of time and if there were calls to my attorney, it was either by my wife or by Mel Adler from the hospital.

Q Do you recall being downstairs, out of your room, on the telephone with your broker the day after the alleged suicide attempt?

A I don't recall that at all. I had nurses around the clock, male nurses around the clock, for four, five, six days.

You didn't tell ther to call your attorney, did you?

A No, I did not.

You didn't tell them to call your broker?

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A No, I did not.

While you were in the hospital, you of course failed to appear for your perjury trial, which was to begin on October 16. Do you remember that?

A Yes.

Q So you not only avoided going to jail but you avoided beginning your perjury trial?

A That's correct.

Q Did you ever hear what the Government had to say about your alleged suicide attempt?

A I may have. I am not sure.

Q You are about to.

MR. KEEGAN: Your Honor, this is a Government document filed in the case against Mr. Stein. I would like to have it marked the next defense exhibit.

(Defendant Reynold's Exhibit F marked for identification.)

MR. KEEGAN: I offer this in evidence at this time.

MR. WOHL: No objection.

(Defendant Reynold's Exhibit F for identification, received in evidence.)

Mr. Stein, did you actually take pills on the plane?

1	bme 5	Stein - cross	4098
2	A	Yes.	
3	Q	Did you tell your friend Mel Adler you had	take
4	pills on t	he plane?	
5	Λ	Did I tell him what?	
6	Q	That you had taken pills?	
7	Λ	After I had taken them, yes.	
8	Q.	What was your purpose in telling Mr. Adler	you
9	had taken	pills to commit suicide?	
10	A	Because I was sorry that I had taken them	after
11	I had take	n them.	
12	Q	You changed your mind?	
13	A	Yes.	
14	Q	Did you ask Mr. Adler to report the fact t	o the
15	Captain of	the airplane?	
16	Λ	Yes.	
17	Q	Did you ask Mr. Adler to call ahead or hav	e the
18	pilot call	ahead to have an ambulance waiting for you	?
19	A	Yes.	
20	Q	He far out of Miami did you take the pill	s?
21	A	I don't recall.	
22	Q	How many pills did you take?	
23	Α	Whatever was in the bottles.	
24	0	What kind of mills were them Mr. States	

Sleeping pills.

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1	bme 6	Stein - cross 4099
2	Q	What is the brand name?
3	Λ	Dalmain.
4	Q	Will you spell that for me.
5	٨	I think it is D-a-l-m-a-i-n.
6	Q	Who prescribed those pills for you?
7	A	My doctor.
8	Q	What is his name?
9	Α	The doctor that prescribed the pills originally
10	is Dr. Jos	eph Burns.
11	Q	Where does he practice medicine?
12	a A	Miami Beach.
13	Ō	Where did you fill the prescription?
14	Α	I don't recall.
15	Q	Did the hospital when they were told you had
16	taken slee	eping pills, rush you in and pump your stomach?
17	۸	No.
18	Q	They let you wait there, refusing to admit you?
19	A	Not so. They admitted me immediately.
20	Q	Immediately upon the arrival of Dr. Leone?
21	Λ	Dr. Leone never came to the hospital. I never
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Because I know he would have billed me had he

Q But you were in a hazy condition, Mr. Stein,

saw nis face again, ever.

how would you know?

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come to see me. I never saw the man again.

O Did he call the hospital and tell the hospital to admit you?

A I don't know.

MR. WOHL: How could Mr. Stein know if a doctor called a third person?

MR. KEEGAN: The doctor could have told him he had come to the hospital.

MR. WOHL: I submit we are not looking for this sort of hearsay evidence.

- Q This was a 6:30 flight from Newark, was it not?
- A I don't know.
- Q It landed at 8:30 in Miami, did it not?
- A I don't know.
- Q You were not admitted to the hospital until 11:30, Mr. Stein, were you?
 - A I don't know.
 - Q Because you were in a hazy condition?
 - A I said I don't know.
- You don't know what your friend Mel Adler was doing with you with these pills in your stomach for some three hours?

A Do you have a hospital record showing the time of my admission to the hospital? I would like to see it.

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MR. ROBSON: Show him the affidavit.

THE COURT: Mr. Robson.

MR. KEEGAN: I won't read this now, to save time, because we can read it in summation --

THE COURT: Just a minute, what is this chorus going on here, calling out, Mr. Gardner, Mr. Robson, to the attorney as he is cross examining?

We don't conduct trials like that.

MR. ROBSON: Your Honor, we have all been very severely limited in the time we have for cross examination and it becomes essential that we cooperate with each other in order to get all the facts out of this witness before the jury.

THE COURT: You are not to call out again.

If you want to speak to Mr. Keegan, you motion to him and have him come over there. Don't yell out again. That goes for all the lawyers at the table there.

MR. KEEGAN: Your Honor, I would now like to read the affidavit, if I may.

This is United States District Court, Southern
District of New York, United States against Sidney
Stein.

Before I read it --

Q Did your attorney make another application to

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stay your surrender for jail and to reduce your sentence based upon the psychiatric history you had developed?

- A Which attorney?
- Q I don't know. You tell me.
- A I don't know.
- Q Did Mr. Soika make such an application?
- A I don't know.
- Q Did Leonard Glass make such an application?
- A I don't think he represented me in that case.
- Q Do you know who made it?
- A If you show me a document, I will be able to respond to your answer.

MR. KEEGAN: I will read the affidavit.

- (Mr. Keegan reads to the jury from Defendant Reynold's Exhibit F in evidence.)
- Q Did your attorney make a civil application in Florida to prevent the marshals from taking you from that hospital and putting you in jail?
- A He had a Court Order signed by a Judge in Florida that was done by an attorney by the name of Nealson.
- Q Which in effect overruled a Court Order by a Judge in New York that you should surrender?
- A I don't know what it overruled. I don't know the papers in New York, I wasn't in New York. If you show

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Stein - cross

2 them to me --

(Mr. Keegan continues to read to the jury from

Defendant Reynold's Exhibit F in evidence.)

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The report from Springfield is dated January 9.

You went out there November 7. Did you spend November 7

to January 9 at the Springfield medical facility?

A No. I was brought back by the marshals to be a witness in a case.

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While you were being examined by the Government to determine your psychiatric health, they used you in a case to testify as a witness?

A The examination -- the psychiatric examination was finished and they were waiting to do the intelligence test and from the time I left Springfield, came to New York and testified in the Walshin case, then returned to Springfield, from that point to the time of being brought back to New York to West Street, all they did was paper work and observation, but the psychiatric tests had already been completed by that time.

While you were in New York testifying in that case, you were not kept at the Federal facility on West Street in Manhattan, were you?

A No. I was kept in this building with two marshals in the first aid room which didn't have any facilities, no bathroom, no sheets on the bed, no heat, in the cold of winter.

Q Did you sleep in that room or did you sleep in the Bergen County jail in New Jersey?

I slept in this courthouse in the First Aid Station.

The nurses room?

The First Aid Station. If you want to call it a nurses room, well call it a nurses room.

pressed.

1	rm:mg	22 Stein-cross	4233
2	Ω	You truly meant to kill yourself?	
3	A		
4	Q	When you took the pills on the airplane	e, you
5	truly	meant to kill yourself?	
6	A	Yes.	
7	ū	Recause you were going to prison the ne	ext day?
8	A	Yes.	
9	Q	And here to stay out all you have to do	is tell
10	two li	ttle lies, Wax and Levine took a bribe, a	
11		THE COURT: Just a moment-	
12	Q	To get the Government's recommendation	that you
13	not go	to prison, all you have to do is tell two	little
14	lies.		
15		MR. WOHL: The evidence is not that the	Government
16	is goin	ng to make any recommendation. Objection.	
17		THE COURT: Yes, that is an incorrect q	uestion.
18		That has not been testified to, that th	e Govern-
19	ment wo	ould make a recommendation.	
20		The testimony has been that the Governm	ent would
21	tell th	he Court of his cooperation with the Gover	nment,
22	which i	is different.	
23		MR. ANDREWS: Thank you, your Honor.	
24		I have no other questions. Thank you.	
25		THE COURT: Mr. Higgins?	

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AFTERNOON SESSION

2:00 p.m.

(In open court, jury not present)

MR. FISCHETTI: My application is based upon Mr. Wohl's redirect examination of Mr. Stein, which really has three points. I will attempt to explain them briefly and as concisely as I can.

Mr. Wohl went into an area where he elicited from the witness that the Government opposed his motion to reduce his sentence before Judge Bryan.

In that opposition there was an affidavit which has already been read to the jury by an Assistant United States Attorney by the name of Rowland.

In that affidavit by the Obvernment, by Assistant U. S. Attorney Rowland, the Government stated that Mr. Stein's suicide attempt was a sham, and there are two paragraphs of it I would like to read to the Court to bring it into focus.

They stated:

"The purported suicide attempt within hours of this conversation suggests that the doctor was either a remarkable prophet or a participant ina clever, fraudulent scheme designed to keep Stein out of jail."

Further on the Government made an inquiry as to the

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time that the plane landed and the time that Mr. Stein went to the hospital, and they state that the plane arrived in Miami at 8:50 p.m., and Stein's whereabouts from 8:50 p.m. when the plane arrived, to 11:30 p.m., when he arrived at the hospital, remains unexplained.

It is clear, however, there is no rush to the hospital indicated by this purported suicide case.

They go on to state the marshals observed Mr. Stein smoking--

THE COURT: We have been over that, Mr. Fischetti. Where are you going? I am familiar with that now. We spent at least an hour here one night while that was gone into in the greatest detail.

Where are you going?

MR. FISCHETTI: I am going in this area, your Honor.

The Government has placed Mr. Stein on the stand, and he testified under oath the suicide attempt was not fake, as alleged by the Government in 1972; that it was a real suicide attempt.

THE COURT: Who has done that?

MR. FISCHETTI: Mr. Stein testified he actually attempted commit suicide, it wasn't a fake, sham; it was an actual suicide attempt.

As a matter of fact, that was Mr. Keegan's last question, or next to last question.

My application is that since Mr. Wohl has placed this witness on the stand, and since the Government vouches for the credibility of its witnesses, and also because of the fact that part of the agreement that Mr. Stein reached was that he would not perjure himself in his testimony, my application is that I call upon Mr. Wohl now under his duty, under Brady and Berger v. the United States to tell us whether in fact he believes now, or the Government believes now, that Mr. Stein's suicide attempt was real, or are they still of the same opinion that they were in 1972 that it was a sham?

I believe we are entitled to know that from this Assistant in this trial, whether the Government has changed its position.

That is my application, Judge.

THE COURT: I haven't heard any indication that the Government has changed its position.

MR. FISCHETTI: Mr. Wohl has sat quietly while Mr. Stein has testified that the suicide attempt was real. He said that on three occasions.

THE COURT: That is the Government's opinion, that it was a sham.

MR. FISCHETTI: That is the Government's opinion now?

I would like to hear that from Mr. Wohl.

MR. WOHL: Your Honor, I don't think that the Government can take a position on something like this. It is up to individual people in the Government. Some have one opinion, others have another.

The fact is the matters are already in evidence.

After the Government took a position in the affidavit of

Mr. Rowland, Mr. Stein was examined at Springfield by people

who are supposed to be expert in these types of examinations,

and they sent a report back that was fairly long, and al
though I don't recall its exact words at the present time,

I think it suggested that there were psychiatric disorders

in Mr. Stein's make-up, and that he was on the verge of

some kind of break-up.

I don't know what that means, but I don't think that my personal opinion, or the personal opinion of any Assistant U. S.Attorney, or any other Government officer, is really the issue here.

MR. FISCHETTI: I am not asking for Mr. Wohl's personal opinion. Mr. Wohl represents the United States Government. I maintain that he cannot sit silently if the U. S. Government, represented by Mr. Wohl, does not believe

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that Mr. Stein's suicide attempt was real.

When he says under oath, "My suicide attempt was real"; if the Government's position is it was a sham they must tell us that.

Now, under Brady -- if he believes Mr. Stein is telling us the truth, he may tell that, too.

THE COURT: That is not a Brady argument. All you are saying is that they said one thing at one time, and the witness testifies inconsistently to their opinion at this time.

That is all it says. The witness says it was real. The Government was of the view that it was a sham. It is just their view, their assessment of the facts, and that is in evidence before the jury. His statement under oath is also here. That's no Brady material.

You just want the Government a say whether they still believe that or still have that assessment?

MR. FISCHETTI: That is correct. That is exactly what I want them to do. I feel it is their duty, and that is my application. They have already once said it was a sham. He testified to the contrary. I believe the Government is called upon to tell us whether or not in the Government's or inion Mr. Stein's testimony is truthful or not.

THE COURT: I haven't heard any suggestion that

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SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

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they have changed their view.

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of that changed?

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Is your view changed, or the Government's view

MR. WOHL: I don't think the Government has a one, universal opinion on this, your Honor. I think there obviously was a certain addition, you might say, to the Government's position in the report from Springfield, which, if anything, as I read it, tended to offer some support to Mr. Stein's position that he was on the verge -- as I recall, it said something to the effect that he was on the verge of a psychotic break-up or of going into a psychosis.

Obviously, Mr. Stein has testified a number of times that he can be prosecuted for perjury at the present time. If he knos that the Government were totally of the position and convinced that it could establish that that was a complete sham, and he testifies here in court that it wasn't a sham, then he would be liable for a perjury prosecution.

But I think there are some situations where the Government doesn't take a formal position one way or the other by, say, filing an indictment or something to that effect.

The only ormal position that I know of our office taking concerning that activityon that aircraft was what was

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stated in Mr. Rowland's affidavit, and in my judgment,

speaking as one member of the U. S. Attorney's Office, it seems to me that position was at least partially undercut by the opinion of the people from Springfield.

THE COURT: I see.

All right.

MR. HIGGINS: If I may, respecting the opinion of the people from Springfield, I am quoting from the report dated January 9, 1973, addressed to Judge Bryan; the last paragraph reads:

"Therefore, we recommend that Mr. Stein receive a sentence of two years under the provisions of Ticle 18, USC Section 4208A2, supportive counseling and appropriate treatment will be available during confinement tohelp him regain and maintain emotional stability.

"We would normally recommend a longer sentence for Mr. Stein. However, since the Court gave a two-year sentence for the study, we assume this is the maximum sentence for the offense."

So, contrary to what Mr. Wohl is suggesting, the Bureau of Prisons actually recommended Mr. Stein be given two years. Indeed, they felt more was appropriate, but the parameter had already been set.

With respect toMr. Stein's testimony --

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THE COURT: Was two years the maximum for that offense?

MR.WOHL: No, two years was the sentence he had been given by the trial judge at that point.

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MR. HIGGINS: It was the parameter.

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With respect to Mr. Stein's testimony, he on three occasions so far said the suicide attempt was not a sham.

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He also said his understanding was that he would not be

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prosecuted for any additional crimes unless he commits

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perjury here and if he does commit perjury here, he can be

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prosecuted for the 250 other crimes and for the perjury he

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commits here in this courtroom.

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He testified three times that that suicide attempt was legitimate. The Government previously stated

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it was a sham.

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We would like to know now what the Government's position is.

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THE COURT: Mr. Fischetti said that. Mr. Wohl answered it, Mr. Higgins, that that position of the Government was undercut by another Government agent, the doctor

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who made the examination.

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So whether the witness Stein is guilty of perjury is something that will have to await trial, if there is

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It can't be tiled here.

LETTER FROM APPELLANT'S PSYCHIATRIST, DAVID D. PINOSKY, M.D., DATED JUNE 18, 1976 DAVID D. PINOSKY, M.D., P.A. DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY DAVID GORDAN PINOSKY, M. D. JORGE H. CAYCEDO, M. D. TELEPHONE 324-1813 MARIO IBANEZ, M. D. SHERWOOD CANTOR, M.D. HERBERT L. ROTHMAN, M. D. F. VICTOR ROVIRA, M.D. MARY F. YOUNG, M. D. June 18, 1976 Phillips, Nizer, Benjiman, Krim, & Ballin Attorneys at Law Attn: Mr. Perry Galler 40 West 57th Street New York, New York 10019 Re: Mr. Sidney Stein Dear Mr. Galler: I am writing to you as I have, in the past, written to Mr. Stein's former attorneys regarding my continuing concern about the pro-

I am writing to you as I have, in the past, written to Mr. Stein's former attorneys regarding my continuing concern about the progressive emotional and physical deterioration in my patient, Mr. Sidney Stein. The enclosed copy of a letter to Mr. Neil Sonnet is reflective of that concern. I have been in frequent telephone contacts with Mr. Stein over the past several months, most recently on June 15, 1976. Mr. Stein continues to suffer weight loss, increasing feelings of hopelessness and futility, and still feels that suicide may be the only way to eri his emotional discomfort and decrease the anxiety and concern of his family.

I again find myself making a plea in Mr. Stein's behalf to end his incarceration so that appropriate psychiatric care can be rendered. Mr. Stein's continued decompensation makes it emergently necessary to bring this matter to those responsible for Mr. Stein's incarceration.

If further information is desired, please do not hesitate to contact me.

Sincerely,

David G. Pinosky, M.D.

DGP/cc

Encl.

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